JPRS 81096

21 JUNE 1982

East Europe Report

ECONOMIC AND INDUSTRIAL AFFAIRS

No. 2284

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CONTENTS

TRADE OFFICIALS DISCUSS EFFECTS OF NEW LAWS

Prague TRIBUNA in Czech No 12, 1982 pp 12-13

[Interview with Josef Danihelka, CSR deputy minister of trade; Josef Prchal, deputy chairman of the Czech Union of Consumer Cooperatives; and Rudolf Kubena, deputy chairman of the South Moravia Kraj National Committee; by reporters Jaroslav Kojzar and Jiri Janouskovec: "Trade and the Law"; in Prague, date of interview not given]

[Text] Domestic trade. The branch at which, justifiably and unjustifiably, much criticism is directed. It too affects, more than any other branch, the satisfaction or dissetisfaction of hundreds and thousands of citizens. Also for this reason the 16th party congress emphasized domestic trade's responsibility to society, the importance of the tasks awaiting domestic trade in the coming period, and the significance of the national committees' efforts to improve its work.

To achieve the expected results, in every area—in trade, at its suppliers, and in the national committees--it is necessary to honestly think about the tasks and to implement them in practice. Only in this way will we be able to fulfill the set objectives.

Therefore the manner in which we wish to fulfill the set objectives was the main topic of our interview with Josef Danihelka, CSR deputy minister of trade; Josef Prchal, deputy chairman of the Czech Union of Consumer Cooperatives; and Rudolf Kubena, deputy chairman of the South Moravia Kraj National Committee.

TRIBUNA: The new Law on Domestic Trade becomes effective as of 1 April. Actually it represents the culmination of four years of effort to perfect the instruments of management within domestic trade. What was the purpose of enacting this law, and what objectives does it set?

Danihelka: We were long aware of the need to change some of the previous principles of managing domestic trade. What these changes should be was debated for several years. The Central Committee of our party also considered these problems and established that domestic trade was not operating according to an integrated trade-policy concept, that the quality of management at the individual levels was

unsuitable for its present tasks, etc. The resolution that the CPCZ Central Committee adopted at that time--it was the Central Committee's seventh session in 1977--set for us a series of tasks. In the course of their implementation it became evident that we could not avoid enacting new statutory regulations that would contribute toward the overall perfection of the activity of domestic trade.

Kubena: This law will become effective within a few days, and we believe that it will soon influence the results of the work of domestic trade. Already because the national committees, so far as relations between trade and the consumers are concerned, will receive wide authority and will no longer have to act in the role of an applicant or of some arbitrator with little authority.

Prchal: The consumer cooperatives on their part regard the new law as a means of eliminating the shortcomings that the sphere of management often did not allow us to remedy effectively. We welcome also the wider authority of the national committees.

TRIBUNA: Even under the "old" law, the national committees did not have to remain passive in their relationship with domestic trade. They were able to influence some things.

Kubena: Exactly. They were able to influence some things, but did not have to do so. They were unable to change many of the decisive factors. Or they succeeded in changing them only through good personal relations among all the top officials concerned, with the help of the party organs and organizations, or simply by making concessions on other matters in return for a promise to satisfy their request.

Danihelka: There were, and actually still are, two laws giving the national committees authority to make decisions regarding domestic trade. The Law on National Committees--from it stem the rights and obligations in conjunction with satisfying the needs and interests of the population--and the 1949 Law on Domestic Trade, from which actually only a single paragraph has been retained, the one authorizing the minister to adopt measures to secure the domestic market's supply. Various decrees, edicts and instructions transferred all other authority to the national committees. However, the problem was that the minister of trade, as a representative of state power, was able to issue decisions that applied only to the trade organizations managed by the CSR Ministry of Trade. In agreement with the chairman of the Czech Union of Consumer cooperatives, similar decisions were issued also within the cooperative network. But the minister's decisions did not apply to other trade organizations. I have in mind, for example the Benzina, Mototechna or Kniha [Books] national enterprises, the retail outlets of production enterprises, etc. In this situation it was practically impossible to coordinate trade policy.

TRIBUNA: Could you cite an example?

Danihelka: Take Mototechna. The CSR Ministry of Trade and the national committees attempted for a long time to persuade the responsible officials of Mototechna to keep their stores open not until 5 pm, but until 6 pm or longer, and not only on weekdays but also on Saturdays. This despite the fact that there was an agreement between the two ministers concerned. The split-off plants of Mototechna simply interpreted in their own way their rights and obligations, and even their relationship with the national committees and consumers.

TRIBUNA: But will the new law be able to influence these and other frequently criticized phenomena within the trade network? For example, specifically the store hours, the shortages of certain types of merchandise, the sales personnel's attitude to customers, the number and location of the retail outlets, the unwarranted closing of stores?

Kubena: The new law will hardly be able to solve some of the problems. How to ensure an adequate supply of certain shortage items when the conditions do not exist for their domestic production in sufficient quantities, and when importation is not feasible for various reasons. But as I have already mentioned, we will be able to solve most of our previous complaints far more effectively than up to now.

Prchal: I can only confirm what you have said. No law and no decree is able to solve the material problems of trade. After all, the stores cannot stock sufficient merchandise on their shelves if the producers do not supply the merchandise. The same holds true for quality, and for better and faster product innovation. In this context we must mention also supplier-customer relations. I do not have to explain what problems we encounter here. The problems between trade and production are the same as between two or more production organizations. But we want to do more than merely point this out. The new law enables us to exert more effective pressure on suppliers than up to now. The law gives us this opportunity, and we intend to use it.

Kubena: Specifically here the national committees will have wider room to influence the market. They will be able, among other things, to decide what type of outlet, with what assortment of mechandise, can open in a given district. Previously this was merely a dream.

TRIBUNA: The national committee, then, will have the final say on what stock the trade network will carry in a given locality. The law that we are discussing authorizes the national committee to regulate the assortment of the merchandise sold in accordance with the needs of the district and the possibilities of the national economy. The national committee will be able to influence the trade network with far greater emphasis, to ensure that merchandise regarded as unattractive, troublesome or difficult to store by the sales personnel does not disappear from the stores.

Danihelka: I think that in this context it will be appropriate to mention another factor to which consumers have frequently called attention up to now, namely the availability of the assortment throughout the store hours, especially in food stores. The point is that people should be able to buy, even after work, everything they need for their households. The new law assumes that this will be so, and it authorizes the national committees to agree with the trade organizations on a standard assortment, which then must be available in the stores.

TRIBUNA: Already now there are favorable experiences with such agreements in some places.

Danihelka: Yes, there are. But only where the range of the assortment is determined sensibly. Understandably, store managers have a great responsibility to order everything they need in due time from their suppliers. But we will not be able to eliminate entirely the fluctuations that may occur. Take summer as an example. In this season the urban resident does his food shopping in the city on Thursday, expecting to buy whatever else he may need--bread, rolls, milk, eggs, etc.--in the locality where he has his vacation hut or cottage. But next day the weather changes, and he decides to stay at home. Then what happens? The rural

food stores expected increased sales, but the bread, rolls, etc. remain unsold, and the same items are in short supply in the city. What does it matter that the demand and supply are generally determined correctly? Although it can happen anytime, our example is an extreme one and merely serves to round out the situation. But it too demonstrates how essential cooperation between the trade organizations and the national committees is to help solve not only the normal situation, but the mentioned extreme one as well.

TRIBUNA: There are of course also other solutions that can help solve problems of this kind. We have in mind suitable rationalization of the sale--and production--of food. Not only certain kinds of bread wrapped in foil, but also the sale of one-kilogram loaves, which would enable shoppers to buy less and could even reduce the demand for bread. And what about milk? Here again we should learn from our neighbors and sell milk in containers, in which milk can be kept fresh much longer. The savings we could achieve in this way are enormous.

Kubena: Based on the conditions in South Moravia Kraj, I can safely say that many things could be solved very quickly. This would require "merely" a change in the present breakdown of the plan, and in the methods of planning in general. In this branch the use of the index method--i.e., increasing the output each year by a certain percentage--is not in accord with the interests of society. Although we have called attention to this repeatedly, it has not been changed. Then how can we expect the bakeries to bake one-kilogram loaves, or bread that is more labor-intensive but remains fresh longer, if this means that they will not fulfill their production plan, and their workers will not be entitled to bonuses and premiums? The ill-considered approach means that the output is there, but the bread is not consumed. At best it is used as feed, and at worst it ends up in the grabage can. Although we have long called attention to this anomaly, it is continuing. Regardless of the fact that we are wasting a raw material that today is more precious than gold.

TRIBUNA: Thus the Law on Domestic Trade is about to become effective. In the remaining time--if this has not already been done--the main task will be to acquaint all workers in domestic trade with its individual principles. And not only that. It will be necessary to begin immediate implementation of the new law. Will this succeed? In Prague, for example, an entirely exemplary decree on cleanliness was issued some time ago. But because the sanctions apply only to a limited extent, it remains merely on paper. Will not something similar happen in this case?

Kubena: I don't think we have anything to fear. Of course, we must begin consistently with the basics.

TRIBUNA: Which means?

Kubena: We must resist various efforts, whether by the managers of domestic trade or the workers in the stores, especially regarding store hours. This is the first thing. In our kraj we are perhaps farther ahead in this respect than elsewhere. We introduced a system under which the manager of a state or cooperative store must come to the national committee with a proposal regarding store hours. And only here is the final Yes or No given. Without guessing, but as the situation requires.

Secondly, it will be necessary to bring consistently to account those who violate the provisions of the law and, say, close the stores without reason. In the future

it will not be possible to close a store without posting a notice that clearly states why the store is closed, for how long, who personnaly approved the closing, and where is the nearest substitute store. After all, we must implement the Law on Domestic Trade in the consumer's behalf, for it was enacted in his interest.

Prchal: I fully agree. But the national committee must take into consideration that the salesperson, too, is a citizen. Therefore he should help to solve the problems related to the activity of domestic trade.

TRIBUNA: We unquestionably must take cognizance of the fact that about 80 percent of the sales personnel in the stores are women who often have small children and have households to manage. Simultaneously we have to bear in mind that in the case of longer store hours it is necessary to ensure also related services, so that the store manager can deposit his proceeds from sales at the post office, and everyone has proper transportation to get home, etc.

Danihelka: Perhaps the most difficult problem will be to ensure transportation. This is why the law provides that the question of store hours must be discussed also by the enterprise's trade-union committee. Here there should be no conflicts, if the law's provisions are strictly observed.

Prchal: Our interview, I believe, correctly focuses on the role of the national committees in the area of domestic trade. Indeed, the national committees will be able to contribute significantly toward improving our work. Not only by regulating store hours or perhaps by exercising control, but also through their knowledge of the comments from citizens, representatives and other organs.

TRIBUNA: Among the frequent comments that have been sent also to our editorial office there is the requirement to keep more stores open on Saturdays and Sundays, and also evenings. Readers frequently cite the experiences of our Soviet and Bulgarian friends. According to the letters, there is growing interest in these forms of retailing, and not only for bread, wine, coffee or sugar. Especially in cities.

Kubena: In Brno we have 12 stores open evenings, and we are preparing to add more. Not all stores are open Saturdays and Sundays. Only a few. But they carry the regular assortment of merchandise. And the interest? Exceptional. Both evenings and on days of rest. The Brno Municipal National Committee came to the conclusion that more stores should be kept open. But the comrades in the management of the Potraviny (Foods) Enterprise are of a different opinion. To determine who is right there remained no other solution than to conduct a survey, to determine on the spot the public's interest in this form of retailing. The result has been unambiguously clear. In the near future we will have to add at least two more stores that will be open on Sundays.

TRIBUNA: So far as extended store hours are concerned, Prague is still the Cinderella among Czechoslovak cities. Here the system of stores open evenings is only sporadic. Actually only the Vcela (Bee) Cooperative has broader experience with extended store hours. In the center of the city it opened a store with a complete assortment of foods.

Prchal: Although the actual return to Vcela on sales in its evening store has yet to be evaluated, it is indisputable that interest in this form of retailing is growing.

Kubena: The national committees' concern and care to seek new forms of cooperation with the trade organizations will necessarily bear fruit. Let me cite a specific example. It was immediately after the 7th session of the CPCZ Central Committee, the results of which significantly influenced the very drafting of the new Law on Domestic Trade. At that time we were able to filter down the results of this session truly as far as the local national committees, and the citizens' committees. The citizens' criticism of, for example, store closures during the summer months led the enterprises to reassess the need to close some stores during vacations. Since then we have been consistently monitoring the number of stores closed. And I must say that their number is declining, slowly but surely. Thus in the past two years we have not encountered any comments on store closures.

Danihelka: Our available store hours are above the European average. Of course, the simple total of available store hours is one thing, and its breakdown in a way that satisfies customers is quite another thing. Nearly 90 percent of the food stores, and 60 percent of the other stores are open Saturdays. This measure, similarly as the extension of evening hours, was adopted for the convenience of the citizens. A basic solution was the Thursday evening extension of store hours in stores selling industrial goods. In agreement with the national committees, we wanted other services to conform to this solution. After the initial problems when many trade workers objected, the result has been a growing interest among customers. But what we still lack is a complete line of goods and services. Therefore we now are seeking shopping centers where on Thursday evenings one can buy not only a television set or furniture, but also food, take one's clothes to the cleaner's, etc. Keeping food stores open Sundays and Saterdays encounters the problem of manpower. The high proportion of female employees makes the solution of this problem difficult. Prague too will have to begin serving customers outside the regular store hours. Perhaps in a different way than in the other krajs. Store hours will have to be set flexibly according to the season of the year, the day of the week, and the location of the store.

Kubena: In our experience, the best remedy for such problems is a good level of the citizens' committees, a knowledge of the needs of the citizens in the district, and responding to them. Then there is nothing to impede an agreement between the national committees and the trade organizations for providing the services that the overwhelming majority of the citizens require.

Danihelka: All workers of domestic trade should be aware that the new law emphasizes quality--in the widest sense of the word--as an integrated system of trade-policy, legal, control and organizational measures to ensure the consumer's justifiable interests. From these interests it is necessary to derive the rise in the level of the supply of merchandise, the care for its composition and quality, and finally the sale itself. Trade acts as the consumer's protector, towards production and foreign trade as well. And simultaneously trade must perform its duties as the organ that ensures the circulation of goods.

TRIBUNA: But all this must not remain without response from production. For the time being, you are not able to influence very much the technical level of the merchandise you are selling, whether in the state or in the cooperative network. The same goes for packaging quality and innovation, which is merely a change of the external appearance, etc.

Danihelka: Trade should not be excluded from the proceedings for adopting Czechoslovak state norms, from proceedings in which basic questions of the output of industrial and consumer goods are decided. Already because trade participates in the evaluation of the products. Every trade organization has its quality inspectors and laboratories. There are the organs of the Czech Trade Inspectorate, etc. And the minute inferior quality is detected, we should consistently see to it that the product is included in compulsory quality evaluation, that its quality grade is revoked, and that--if appropriate--its price is adjusted as it deserves to be.

Simultaneously we must keep consumers better informed about the merchandise sold. There are many ways of doing this. The best way is the training of the sales personnel in the stores. However, this is not possible without information from production. The documentation accompanying mostly industrial goods should be more complete, and of significantly better quality than up to now.

TRIBUNA: We have not discussed a number of things closely linked to the implementation of the Law on Domestic Trade. However, the essential thing was mentioned. Let us seek a solution in the responsible approach of all those who are able to influence customer satisfaction, be they production, the national committees, or the trade organizations. Each of them can offer many suggestions for improving the quality of domestic trade's work.

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CSO: 2400/259

EXPERIENCES WITH THE SET OF MEASURES IN FMPRV SUMMARIZED

Prague HORNIK-ENERGETIK in Czech 6 May 82 p 11

[Article by Engr Karel Cadan, CSc, department director within the Federal Ministry of Fuels and Power: "Closer Attention to the Set of Measures. Last Year's Experience Within the Federal Ministry of Fuels and Power"]

> [Text] The fuel and power sectors devoted considerable attention and no small effort during the past period to the preparation and introduction of the Set of Measures for Perfecting the Planned Management System. Although a single year is not long enough time for a thorough evaluation, it will nevertheless be expedient and necessary to evaluate at least in general the key elements of the Set of Measures in the reproduction process, including the approved special provisions that take the specifics of the fuel and power sectors into account.

The increasing scope of operational decisions by supraenterprise organs, due to external and domestic factors, limits to a certain extent the comprehensive functioning of the elementsof the Set of Measures in the khozraschet and supraenterprise spheres of management. In 1981, effectiveness in the fuel and power sectors was influenced directly or indirectly by the following factors in particular:

--Necessary central interventions in operational management of supplying the economy and the population with fuel and power;

--Mine accidents, particularly in the mines of the Ostrava-Karvina and North Bohemia districts, and the associated large number of injuries;

--The high proportion of coal mined on days of rest, which had already been anticipated in the plan; 3.8 million tons were mined on days of rest in 1981, which on average represents more than 7 percent of the output in underground mining and over 1 percent of the total output in strip mining at continuous operation;

--The still insufficient performance and reliability of the mining machines in strip mining, where the rate of their utilization has declined;

--A conspicuous shortfall in the planned volume of overburden removal, which worsened the situation in the preparedness of the North Bohemia Brown Coal District for mining in future periods; unfavorable weather in the fourth quarter of 1981 also played a role in this;

--Persisting shortcomings in supplier-user relations in the case of deliveries for capital construction as well as for productive consumption;

--Continuing cost overruns on construction projects, especially the nuclear power plants;

--Slow change in the mentality and approach of the managing cadres in the process of decision-making, management and control, from the viewpoint of the practical implementation of the Set of Measures;

Decisive Results in 1981

The effectiveness of the Set of Measures is reflected in the specific economic results, in relation to the plan as well as to the report data for the preceding year. The rate and quality of economic development are characterized by the following:

The coal output reached 122.8 million tons. The plan was fulfilled 99.9 percent at a 1981/1980 index of 100.4; 191.3 million cubic meters of overburden were removed, and plan fulfillment was 93.1 percent at an index of 101.2. Generation of town gas totaled 3.1 billion cubic meters; plan fulfillment was 96.0 percent at an index of 97.5. Electric power generation totaled 63.5 billion kWh, plan fulfillment was 100.5 percent at an index of 101.5. Capital construction totaled 17.4 billion korunas, plan fulfillment was 103.6 percent at an index of 98.4. The capital-labor ratio was 731,000 korunas per worker and plan fulfillment was 98.3 percent at an index of 107.

These are aggregate figures for the entire ministry. If we consider the economic development of the individual sectors within the ministry, then effectiveness in the coal industry declined in 1981, both in relation to the plan and to the comparable report data for the preceding year. The gas industry improved its effectiveness in relation to both the plan and the comparable report data for the preceding year, primarily through favorable structural changes. The electric power industry improved its effectiveness in comparison with the plan, but effectiveness in this sector declined in relation to the comparable report data for 1980.

Situation in Selected Areas of Economic Management

The cost of materials, without the depreciation of capital assets, amounted to 31.5 billion korunas in 1981. This included 13.6 billion korunas or 43 percent for fuel and power, 9.1 billion korunas or 29 percent for materials, and 8.8 billion korunas or 28 percent for other costs (transportation, repairs, etc.).

Most enterprises have introduced consumption norms, are using bonus systems and cost-accounting bonuses, and have attained certain favorable results. Despite this, however, the specific consumption of fuel and power per unit of product is not reduced at the desired rate, neither in the coal industry nor in the power industry. The comprehensive energy efficiency in generating electricity and heat is still low, 33.5 percent at CEZ [Czech Power Plants National Enterprise] and 32 percent at SEP [Slovak Power Plants National Enterprise].

If we compare the input-output ratios of fuel and power within the ministry in terms of standard fuel equivalent, then in 1981 the input reached 46.03 percent of the

output, whereas in 1980 it was merely 45.31 percent. The worsening of the indicator of energy intensity was due particularly to the less favorable structure of the coal mined (lower outputs of graded quality coal and coking coal).

In the consumption of materials there are likewise considerable reserves for cost reduction, particularly in terms of reusing decisive materials and rebuilding old spare parts.

There have been some favorable phenomena in the development of science and technology. The concentration of tasks and the gradual concentration of the research and development base's capacities on the decisive tasks have begun, in order to shorten the time for solution and realization. Mutual confirmation of the economic benefits from the development of science and technology, between design and development, is having a favorable effect. Exaggerated claims of financial contributions are ceasing slowly but surely, and valuation in this area is becoming more realistic. Despite partial successes in realizing the development of science and technology at our plants and enterprises, however, it must be established that the overall results of the development of science and technology are not commensurate with the expenditures and with the capacity of the ministry's scientific-research base. Annual expenditures in this field are around 800 million korunas, and 5300 workers are employed in it.

Planned average earnings were not achieved in 1981 in the coal and gas industries, while in the electric power industry they were slightly exceeded. The shortfall in the fulfillment of the planned average earnings in the coal industry was caused primarily by unever fulfillment of the mining tasks during the year, and by nonfulfillment of the planned tasks for coal output, its assortment, and for the removal of the overburden at some enterprises. It must be established that also in 1981 the workplaces, plants and enterprises did not achieve any significant changes in wage differentiation and in ending wage equalization, particularly at the auxiliary and service operations and in the case of technical-economic employees.

The main objective of intraenterprise cost accounting is to ensure fulfillment of all the tasks and limits in the economic plan, through a suitable system of breaking down the tasks and the limits on assets, by monitoring their fulfillment, and by providing suitable material incentives within the subdivisions and workplaces of enterprises. Experience indicates that at the subdivisions, enterprises and concerns where the set production tasks are basically in accord with the production capacities, and where there are no exceptional occurrences, cost accounting is mostly on a good level, and good results are being achieved in economization and effectiveness. Audits at selected enterprises confirm that the cost-accounting system can help fulfillment of the production tasks in terms of quantity and assortment, without cost overruns, and stricter economization particularly in the consumption of materials at a better utilization of plant and equipment, thereby also tightening technological, economic and labor discipline.

The basic prerequisites for increasing the effectiveness of capital construction are demanding and qualified expertise, financial, physical and scheduling coordination with the contractors, and skillful management and thorough control of the realization of capital construction. Some improvement can be established on the basis of the results. However, we have not been able to achieve significant progress in raising effectiveness in this area. One of the reasons for this is that the amended regulations governing capital construction were issued late. The program for

reducing and controlling the volume of capital construction in progress has not been mastered, neither statewide nor within the ministry. The demanding nature of the preparations by the investor is being influenced increasingly by ever-stricter requirements by public organs, the organs of health inspection and labor safety, and the organs concerned with the protection of farmland and forests, with all the consequences of lengthening the time required for preparations by the investor. The trend of rising budgeted costs is continuing, especially in the case of non-standard machinery and equipment and where the construction industry is using individual costing. A continuing shortcoming is the cumulation of "financial" fulfillment of capital construction in December. About 18 percent of the total annual expenditure on capital construction was "financially invested" in December of 1981, and in the electric power industry this proportion even reached 21 percent, mostly for technological deliveries.

Implementation counterplanning during the preparation and breakdown of the 1981 plan was basically not employed within the ministry. One of the reasons for this was the delay in issuing the methodological instructions. In course of drafting the plan for 1982, some of the enterprises and concerns did submit better indicators as compared with the Directive for the Elaboration of the Plan, in the form of implementation counter planning. However, their contributions did not improve by much. A basic prerequisite for effective implementation counterplanning during the preparation of the plan for 1983 is the existence of a medium-range plan covering a period of at least three years (1983-1985), and also greater economic incentives, particularly in the area of wages and in the overall coordination of available capacities with the production tasks.

What Have We Learned?

The one year during which the Set of Measures has been in force is too short time for a more thorough evaluation of its effectiveness. Therefore it would be unwise and hasty to make any basic changes in it. However, the following could enhance the effectiveness of the Set of Measures:

a. Creation of a general atmosphere of stricter requirements, leading to more respect for the interests of society as a whole, greater social responsibility, to closer compliance with the regulations and orders, and to stricter discipline of every kind. It is not enough to merely propagate the stricter requirements orally or in writing;

b. Accelerated elaboration of a plan for the period through 1985. This would give the enterprises and economic production units a certain guaranty of their planned inputs and outputs, and of their incentive to improve them, primarily in the form of implementation counterplanning;

c. A stronger approach to raising the effectiveness of capital construction and of the development of science and technology, from preparation through realization;

d. A more effective and more consistent attitude against excessive paperwork, especially where it serves to compensate for and conceal shortcomings in management and responsibility;

e. More purposeful continuation of usefully propagating the application of the Set of Measures within the ministry, in the trade-union journal HORNIK-ENERGETIK, and in the district and plant publications.

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CSO: 2400/256

IMPLEMENTING DECREE FOR SCIENCE, TECHNOLOGY CONTRACTS

Changes in Law Explained

East Berlin WIRTSCHAFTSRECHT in German Vol 13 No 2, Apr-Jun 82 pp 102-105

[Article by Karl-Dieter Schwenk, chief justice, Central Contract Court and chief, industry department of contract court: "Economic Contracts on Scientific-Technical Achievements--On the First Implementing Decree (DVO) to the Contract Law." A translation of the new contract law is published in JPRS 80875, 21 May 82, No 2272 of this series, pp 24-73, under the heading "New Law on Contracts Sets Responsibilities, Sanctions." A translation of the implementing decree discussed below follows this article]

[Text] Among the ten major points of GDR economic strategy for the 1980's, as developed by the Tenth SED Party Congress, the major point involving scientific-technical progress takes first place; this is because "the long-term, steady economic growth of the GDR can be sustained only by a speed-up in scientific-technical progress"[1]. This means that economic law also has the task of drafting legal norms in such a manner that science and production will be tied together even more closely than so far, that scientific-technical results will be transposed into practice as quickly as possible, and that available scientific-technical results can be used faster and more broadly. That resulted in the essential premises for the review for the third DVO/VG [Implementing Decree/Contract Law] (old).

This is the aspect from which we must view the provisions of the first DVO/VG which, compared to the old regulation, are new or which were adapted to the new requirements:

It was necessary to take the growing significance of the specifications as such into account. This is expressed among other things by the fact that it has now been determined that the specifications are a part of the contract even without express agreement among the partners. It was furthermore necessary to draft the rights and duties of the partners in such a way that the specifications would constitute the foundation of their work in, if possible, all phases of cooperation. From that angle, it is especially articles 4, 5, 9, and 10 of the first DVO/VG which are important.

One of the essential causes of the many troubles arising in the establishment of production cooperation relations is due to the fact that the partners

cooperate too late; this is why the information supply obligations were so spelled out that there are rights and duties applicable both to the information-supplying party and the party that is supplied with the information (Article 4).

The coordination contract--with whose help early and planned cooperation, binding for both partners, can be organized, and whose significance, in my opinion, will grow further during the next several years--was revised in keeping with the specific conditions of scientific-technical tasks (Article 5).

The rapid introduction and utilization of scientific-technical results among other things is to be supported by the fact that the rights and duties of the economic units in connection with material-technical backup support were regulated in Article 6.

In the course of the discussions it was demanded that a regulation be created which in particular supports the material-technical backup support for the tasks of the science and technology state plan. Comprehensive considerations were entertained therefore, regarding a possible settlement here, during the drafting of the basic concept. Further work on the law however shows that yet another generalization is necessary because priority contract conclusion is justified not only for the tasks of the science and technology state plan but also for other tasks, for example, the export of systems. This is why a generalizing provision was included in the contract law and this is why there was no special provision in the first DVO/VG.

The use of scientific-technical results was regulated in a complex fashion, including the award of methods in order thus to give the economic units uniform instructions in the establishment of the necessary production cooperation relations (articles 19 ff.).

Subject of Economic Contract Covering Scientific-Technical Performances

The third DVO/VG (old) for the first time, in the context of legislation, represents an attempt to define scientific-technical performances in terms of content. Through Article 2, first DVO/VG, an attempt has now been made to develop this provision further. Here, as was done already in Article 1, third DVO/VG (old), a compromise was worked out between clear theoretical definition and practicable guidance. The actual definition is contained in the first part of Paragraph 1, Article 2; the reference to the listing of work steps and performances concerning tasks in the science and technology plan[2] was included in order to facilitate the application of this provision because all performances, contained in the list, undoubtedly involve scientific-technical performances.

It was pointed out in the discussion with full justification that there are also scientific-technical performances which are not contained in the list. It was thus demanded that the regulation be so drafted that it would also be applicable to expert reports, analyses, specific investigations of a natural-science-technical, technological, medical, or social-science nature, as well as geological and geophysical investigation work and the like. Furthermore,

it was pointed out that there are also design and planning performances which are not contained in the list. This for example involves construction planning. This is why it was specified in Article 2, Paragraph 3, first DVO/VG, that the first DVO would apply also to those performances which are not contained in the list but which, as for the rest, meet the requirements of Paragraph 1, that is to say, those that are aimed at the implementation of scientific-technical progress, those that were produced by way of implementation of or as the result of intellectually creative work, with the use of scientific work methods.

No attempt was made to come up with the most c[illegible]re possible listing in Article 2, Paragraph 3. Only the typical and most frequent scientific-technical performances were listed. These listed performances in each case involve scientific-technical performances. Here in other words we do not need to examine whether they meet the requirements of Article 2, Paragraph 1.

The first DVO/VG does not contain any provision that would introduce a dividing line with respect to the other implementing decrees. The dividing line with respect to the Delivery Decree[3] springs from Article 5, VG, with respect to the third DVO/VG, it springs from Article 1, Paragraph 3, third DVO, and with respect to the second DVO/VG, it derives from Article 1, Paragraph 3, second DVO. The dividing line with respect to the LVO [Delivery Decree] and the third DVO here creates hardly any difficulties. But this turns out to be more problematical in relation to the second DVO. Here it must be made clear that the delivery of newly-developed or improved products is not treated as a case of turning out scientific-technical performances in the first DVO. In other words, if newly-developed or improved products are introduced into investments, then there cannot be any problems in terms of dividing lines between the first and second DVO/VG because the first DVO does not apply in any case[4].

Note Significance of Specifications

The specifications constitute an important management document for the combine's general manager to help him in guaranteeing a high level of creative performances in research and development[5]. Through the specifications, we can help work toward raising the level and the effectiveness of scientific-technical work. Because the drafting of the specifications and their confirmation and the content quite correctly are regulated in a special regulation, the Specifications Decree, it was necessary to include in the first DVO/VG only those facts which directly touch production cooperation. In this connection we must above all point to Article 9, first DVO/VG. Accordingly, the specifications constitute a part of the contract even without express agreement. In this way, the current provision in Article 11, third DVO (old) was amended; it only provided for the right of the partners to agree that the specifications would be a part of the contract. This amendment was made because it is necessary in the specifications to spell out the objective and the jobs within the scientific-technical task; in this way, we can determine the scientific-technical and economic parameters which are of decisive importance to the relations between the partners. This is why it was necessary to determine that the specifications would be a part of the contract also without express agreement. By the way, it would not be efficient once again in the contract to stipulate parameters and agreements which are already spelled out in the specifications.

Article 7, Paragraph 3, Specifications Decree--providing for the confirmation of the specifications by both partners--however tells us that the specifications become a part of the contract only after both partners have confirmed them. If the specifications, for example, are drafted only by one partner and if they are not signed by the other one, then they will not be binding in the relationship among the partners. The determination to the effect that the specifications are a part of the contract even without contractual agreement thus does not replace the agreement among the partners.

The designation of the specifications as a part of the contract has been challenged on various occasions to the effect that it is not supposed to be necessary to make the entire specifications a part of the contract. This must be countered by stating that a differentiation between those determinations in the specifications which become a subject of the contract and those which do not, is hardly possible in a legal regulation. There is certainly no debating the fact that the specifications decree contains a series of provisions which are not subject to agreement among the parnters and which thus also are not part of the contract. The partners by the way also have the right to spell out the provisions of the specifications in the contract or to make reference to certain provisions in the specifications for the purpose of attaining greater clarity.

Specifications and Task Statements

Article 7 of the Specifications Decree states that the economic and scientific-technical target and job statement must be worked out by both partners together and that the specifications must be confirmed by the client and the contractor. This means that adequate provisions were made for the drafting of the job statement and to that extent there was no need for any provision to draft the job statement in the first DVO/VG. This is why it was decided not to introduce a provision such as it is contained in Article 24, third DVO (old).

The provision in the third DVO (old) in the past has given rise to questions regarding the relationship between the specifications and the job statement. It was pointed out that, in addition to the specifications, containing the economic and scientific-technical objective and thus also all important parameters, there cannot be any separate job statement going beyond that; this was countered by maintaining that this is blocked by the provision of Article 24, third DVO (old) which obligatorially calls for drafting the job statement. This apparent contradiction has now been eliminated through the specifications decree and the first DVO/VG. Something similar also applies to the provision in Article 24, third DVO (old), according to which economic contracts must be concluded on performances which are covered by production cooperation in connection with the drafting of the job statement. This obligation arises already from the general provisions on the contract obligation in the contract law and did not require any special development.

Conclusion of Economic Contracts

The State Contract Court did a rather comprehensive job on the material-technical backup support for the tasks listed in the State Plan. Here it was found that one essential cause of the arising difficulties had to do with the fact that the requirements, to be met by enterprises that were to take care of these performances, were communicated too late. The provision now created concerning priority contract conclusion (Article 26, VG), will now help solve some problems.

The positive effects of priority regulation depend extensively on whether information is given at the right time concerning the requirements to be met on a priority basis. This means that the most important production cooperation partners must be informed at the right time. In these cases, the performances can frequently still be inserted into the plans because it is often very small quantities of material which are not made available and which thus hinder scientific-technical progress.

Article 4, first DVO/VG therefore expands on the information obligation of the economic units. Here, both the requirements for the content of this information and the obligation of the informing enterprises to react to this information were spelled out in obligatory terms. This means that we went considerably beyond the requirements of Article 4, third DVO (old).

It was demanded at the third conference of the SED Central Committee that more export commodities of top-level quality be developed[6]. The science and technology plan is to be oriented far more strongly toward foreign-trade requirements. This calls for close cooperation among the foreign trade enterprises and the export enterprises in developing new products. This is why the duties of the foreign trade enterprises in connection with information exchange were expressly spelled out in Article 4, Paragraph 3, first DVO/VG. The economic units furthermore were instructed in Article 9, third DVO/VG, obligatorily to spell out their rights and duties connected with the development of new and the improvement of old processes and methods in the coordination contract.

A provision on material-technical backup support was also newly included. Here, a task [job] standard was created which is to make the close connection between research and development and material backup support clear and which demands that the economic units initiate the required measures at the right time. Some of the duties spelled out here regarding the reporting of the requirement or the indication of the utilization purpose in the requirement report might appear somewhat tough; but they cannot be spelled out in any more specific fashion in the context of the first DVO/VG. It is therefore the job of the economic units to make decisions in a responsible fashion as to the timing as well as the scope and the type of the measures to be initiated for the material-technical backup support for the transposition of scientific-technical results into practice.

In this connection it is pointed out once again that the practical implementation of the provision on priority contract conclusion calls for complying

with the duties spelled out in Article 6, first DVO/VG. The requirement can be fitted in on a priority basis only if the obligated organs or enterprises know that this is a priority requirement.

Coordination Contract

Starting with the basic model of the coordination contract, which was newly set up in Article 25, VG, Article 5, first DVO/VG, spells out the special features of the coordination contract in connection with scientific-technical tasks. Here we essentially tied in with the proven provision of Article 5, third DVO (old) in working out the content. It was possible to include only a few essential guidelines. Especially when it comes to scientific-technical tasks, both partners must be required to clarify on their own responsibility which additional agreements are necessary.

The practical application case spelled out in Article 5, Paragraph 2, first DVO/VG, is particularly significant, to the effect that an enterprise demands that another one deliver to it a product to be newly developed. In this case, the enterprises do not enter into any performance contract on a scientific-technical performance because the delivery of a newly developed product is not a scientific-technical performance; instead, they organized their relations in terms of the development work to be done within a coordination contract and they conclude a delivery contract on the delivery of the products. By means of the coordination contract it is possible to exert influence to the effect that the required parameters can be implemented and that the development will be carried out in keeping with the justified requirements of the customers. This means that the commercial enterprises were also given an important instrument in order to be able to influence required new developments or improvements at the producer's end on a contractual basis. The discussion on the determination to the effect that the annual minimum quantities must be agreed upon was conducted in a partly controversial fashion. It was argued that it is not possible to determine and agree upon the minimum quantities at such an early point in time. But that had to be countered by noting that we are not concerned here with the determination of the specific delivery volume but only with a minimum volume. If it is impossible to determine the minimum quantity then one must ask oneself how one is then to determine the necessity and effectiveness of development. Would there then not be a danger of tying down urgently needed research and development capacity for ineffective development tasks? The purpose of Article 5, Paragraph 2, first DVO/VG, among other things, is to make sure that the interests of the national economy and the interests of the producers--who must know whether there will be a sales possibility for the products to be newly developed--will agree completely. We cannot allow a situation where development work is done without a prior clarification of the sales outlet question. These remarks are designed to make it clear that we are concerned with a very basic issue here. Reference must also be made to the fact that Article 4, Paragarph 2, third DVO/VG, contains an identical determination. Article 8, first DVO/VG, applies to the amendment and cancellation of coordination contracts. As for the rest, the general provisions of contract law apply.

Contract Content

Article 9, first DVO/VG, does not contain a full listing of the contract content--as was attempted in Article 10, third DVO (old)--in favor of a tightening-up of the regulation. The partners have adequate orientation when it comes to working out the contracts both by virtue of the provisions on the contract content in the contract law and by virtue of the provisions immediately following Article 9, first DVO/VG, for example, concerning cooperation, quality, guarantee, etc. Article 9 therefore only contains the orientation which is still required beyond that.

A series of provisions in the third DVO/VG (old) was dropped in the light of the consideration that they are not absolutely necessary in view of our current knowledge and that the economic units are in a position to enter into the necessary agreements on their own responsibility. If we examine above all the 2nd Subsection, 3rd Section, third DVO (old), "Special Development of Rights and Duties," on this aspect, then we arrive at the conclusion that this part of the third DVO (old) could not possibly be taken over in this form. Practice has shown that there is no longer any need for a detailed regulation of research and development performances as well as standardization performances. At the time that the contract on scientific-technical performances was being drafted, it was a meritorious achievement to be able to give the economic units a regulation which made it easier for them to conclude contracts. This guidance aspect was also the essential cause of the inclusion of this regulation into the third DVO (old). Our interpretation of the law and our broader knowledge however enable us today uniformly to regulate only the basic provisions of the contract on scientific-technical performances and to leave the modifications to the responsibility of the partners. This is why only testing performances and utilization were regulated separately because essential and special aspects, requiring regulation, exist here after all.

Because a repetition with respect to the contract law was to be avoided, we dropped all those provisions in the new version of the first DVO/VG which are regulated in a generally obligatory fashion in the contract law. This is why, for example, we did not include a provision on contract conclusion, such as it is contained in Article 6, third DVO (old). When and on what basis contracts are to be concluded will be derived from the general regulations on contract conclusion because they are applicable also in the case of scientific-technical performances.

We also decided not to regulate here such questions as general contractorship or freedom from general warranty in the first DVO/VG. Because these regulations so far, for example, have been contained both in the third DVO (old) and in the fourth DVO (old) and partly also in the eighth DVO (old), the regulations were standardized and included in the contract law.

Giving Scientific-Technical Results for Remunerated Use

The third DVO (old) regulated the use of scientific-technical results in addition to the award of processes, that is to say, both of them accordingly

were independent juridical solutions. If we examine both regulation models, we find that the basic juridical solution is the same. In each case, existing scientific results are given to a customer for use against remuneration. It was therefore obvious to standardize the text and thus to make it easier for the enterprises to apply this provision. Article 18, first DVO/VG, therefore contains a uniform basic principle both for the use and for the award of processes. At the same time, the regulation has the purpose of covering all cooperation-law provisions, contained in other legal regulations[7], in a complex manner. The idea was, in keeping with a comprehensive application of existing scientific-technical results, to give the partners guidance for the conclusion of contracts. In terms of content, the text essentially followed the old concept of the third DVO (old) and the regulation on use. But reference must also be made to Article 18, Paragraph 2, first DVO/VG, which states what results ready for use really are. Here, a change was made compared to the regulation on use. Article 2, Paragraph 2, of the Regulation on Use provides that results capable of being used exist only if, for their utilization, the surrendering enterprise gives the documentation, transmits production experiences, or provides support. These criteria need no longer exist regarding results from research and development and for enterprise-organizing and economy-organizing solutions. The idea is to prevent disputes between the partners as to whether, for example, production experiences were really passed on and whether results capable of being used thus really exist. Besides, the interests of the enterprises--where such results exist--concerning the giving of these results was to be stimulated. The provision contained in the Regulation on Use was retained for inventions and innovations protected by industrial patent rights.

In the discussion the question was asked on various occasions whether the Regulation on Use is to be rescinded or whether it is to continue to exist. Because the cooperation-law provisions of the Regulation on Use were included in the first DVO/VG, it is necessary to revise the Regulation on Use because such questions, as financing and the formation of the remuneration, were not settled in the first DVO so that a rescission of the Regulation on Use without replacement is not possible.

In settling the matter of material liability, the concept in the third DVO (old) was retained, that is to say, the provisions of contract law do apply and only the required special features were regulated. Article 23, Paragraph 1, first DVO/VG, gives the economic units the possibility of agreeing upon contract fines and damage restitution in the light of specific conditions and the risk, in deviation from the determinations contained in the contract law or other legal regulations.

If we compare the version of articles 23 ff., first DVO/VG, with the corresponding legal norms in the third DVO (old), we will note several editorial changes. These changes were essentially made in order to formulate identical provisions in the first DVO and the second DVO (see Article 29, second DVO). There were thus no motives in terms of content for these changes.

The risk connected with scientific-technical performances was also adequately taken into account with this regulation. Here it was necessary to observe that,

on the one hand, it is necessary to stimulate the readiness to undertake risks whereas, on the other hand, it is also necessary to urge the economic units to work with the utmost care. If an economic unit fails to meet these requirements, it must pay penalties just as if it were to have had to provide some other performance.

Concerning the risk problem complex, it must furthermore be kept in mind that this involves not only a question of material liability. The handling of the amendment and cancellation of economic contracts in Article 8, first DVO/VG, is based, for example, on the consideration of so stimulating the risk readiness of contractors that they will also be ready to enter into contracts that might perhaps later on have to be canceled again because new circumstances have arisen which none of the partners was able to foresee.

The proven provision of the third DVO (old) on the legal consequences in case of violation of warranty rights was also taken over. The provision (now Article 24, first DVO), according to which warranty demands are ruled out if the contract violation is due to circumstances which the contractor was unable to avert in spite of all care, considering progressive scientific-technical discoveries and work methods, likewise pursues the objective of stimulating the readiness of the economic units to undertake risks.

FOOTNOTES

1. "Bericht des ZK der SED an den X. Parteitag der SED" [SED Central Committee Report to the Tenth SED Party Congress], reporter: E. Honecker, Berlin, 1981, p 51.

2. "28 May 1975 Order on the List of Work Steps and Performances Involved in the Tasks of the Science and Technology Plan," GBL.,[Legal Gazette], I, No 23, p 476.

3. "15 October 1981 Decree on Deliveries and Performances for the Armed Services--Delivery Decree (LVO)," GBL., I, No 31, p 357.

4. On this problem complex of drawing dividing lines, see also the article by H. Walter in this issue, p 106.

5. See Article 2, 17 December 1981 Decree on the Specifications for Research and Development Tasks—Specifications Decree, GBL., I, 1982, No 1, p 1.

6. See "Aus dem Bericht des Politbueros an die 3. Tagung des ZK der SED" [From the Political Bureau Report to the Third Conference of the SED Central Committee], reporter: E. Honecker, Berlin, 1981, p 44.

7. See the 4 November 1971 order on remunerated use of scientific-technical results in the GDR--Regulation on Use, GBL, II, No 75, p 641. In connection with the giving of processes, the directive of the National Economic Council of 20 January 1964 was also applied in practice; it deals with process ownership in the erection of chemical plants at home and abroad because the third DVO/VG (old) contained only a few basic provisions.

Text of Decree

East Berlin GESETZBLATT DER DEUTSCHEN DEMOKRATISCHEN REPUBLIK in German Part I No 16, 29 Apr 82 pp 325-328

[Official text of "First Implementing Decree to the Contract Law--Economic Contracts on Scientific-Techncial Achievements--25 March 1982," signed by Willi Stoph, chairman, GDR Council of Ministers]

[Text] The following is hereby ordered on the basis of Article 117, Paragraph 1, of the Contract Law of 25 March 1982 (GBL., I, No 14, p 293):

Chapter 1. General Provisions

Scope

Article 1.

(1) This implementing decree regulates the conclusion and implementation of economic contracts for the coordination of economic-technical cooperation and on the implementation of scientific-technical performances.

(2) This implementing decree applies accordingly to other scientific performaces.

Article 2.

(1) Scientific-technical performances are performances whose subject is the solution of a problem aimed at the implementation of scientific-technical progress, which are provided primarily by way of implementation or as a result of intellectual-creative work and using scientific work methods, and which correspond to the performances contained in the list of work steps and performances connected with jobs within the science and technology plant.

(2) Scientific-technical performances in particular are research and development performances, including the implementation of tests and experiments, as well as model construction performances and the erection of experimental structures and experimental facilities plus the giving of scientific-technical results for remunerated use.

(3) The provisions of this implementing decree must also be applied to the design and planning performances as well as other performances which are not contained in the list on work steps and performances of jobs in the science and technology plan, if they correspond to the requirements of Paragraph 1 for the rest.

Article 3. Tasks of Economic Contracts

The economic units must so organize their cooperation on the basis of government plan decisions through the conclusion of economic contracts on scientific-technical performances that the scientific-technical results--in terms of

their utility value parameters, costs, lifetime, and reliability--will take into account advanced international standards and will meet the requirements of strengthening the national economy's material-technical base. They must guarantee broad use of available scientific-technical discoveries via the economic contracts.

Article 4. Information Obligations

(1) The economic units must mutually inform each other on the development of scientific-technical progress, especially on the development of their products and processes, to the extent that this is necessary for the development of their production cooperation relations. The information must be supplied at the very latest at the time the specifications are worked out.

(2) A report on the preparation of future performance relationships must contain data on the content and scope of the required performance. The informed economic units must declare within one month the extent to which the required performance corresponds to their research and development production profile.

(3) The foreign trade enterprises must--in the context of information exchange --in particular develop proposals for the utility properties to be attained, they must submit data on cost and price development, and they must cooperate in the procurement of documentation.

Article 5. Coordination Contracts

(1) In the coordination contracts it is necessary in particular to arrive at agreements on the following:

1. The qualitative and time requirements for the development of products and processes;

2. Freedom from general warranty and patent-law measures;

3. The upper limit for costs and prices for the products to be developed;

4. The rights and duties of the partners in drafting the specifications, in the conduct of tests as well as performance certificates;

5. Participation in [thesis] defenses and

6. Protection of secrecy.

(2) If the coordination contract is concluded to prepare the delivery of products to be developed, then it is necessary, beyond that, to agree upon the annual minimum quantities, the deadlines for the completion of the development work, and transfer into production as well as cooperation by the customer.

Article 6. Material-Technical Backup Support

(1) The economic units must at the right time initiate measures required for the transfer of scientific-technical results into practice, including the

planned preparation and implementation of the necessary investments, especially for the rationalization and modernization of basic aspects.

(2) The economic units are obligated, as soon as the requirement for supplier shipment for the implementation of scientific-technical tasks and the introduction of their results into practice can be determined, to secure the requirements in contractual terms, specifying the utilization purpose.

Article 7. Form of Economic Contracts

The economic contracts on scientific-technical performances are to be concluded in writing.

Article 8. Amendment and Cancellation of Economic Contracts

(1) The partners must immediately inform themselves on new scientific-technical discoveries which can influence the fulfillment of the contract and they must examine the requirement for contract amendment or contract cancellation. This also applies when patent rights held by third parties obstruct the fulfillment of the contract.

(2) If the contract was amended or cancelled due to circumstances not caused by any partner, then the customer is obligated to compensate the contractor for the expenditures that arose, provided the partners did not agree otherwise. New scientific-technical discoveries, which none of the partners was able to foresee at contract signing time, are considered a circumstance which is not caused by any partner.

(3) The expenditures to be reimbursed by the customer also include the proportional stimulation amount in keeping with the legal regulations.

Chapter 2. Working Out Scientific-Technical Results

Article 9. Development of Contract Content

(1) The partners must develop the content of the contract in keeping with the specific conditions of the scientific-technical performance and the requirements spelled out in this chapter. The specifications constitute a part of the contract also without express agreement.

(2) The partners must determine the performance especially through agreements on the objective of scientific-technical work, including the utility coefficients, the scientific-technical and economic level of the performance, including the performance and effectiveness increase, the method of the implementation of work and the form in which the work results are to be handed over.

(3) The partners must furthermore enter into agreement on the measures for the continuation of scientific-technical work, the giving of scientific-technical results to third parties for use, as well as participation in the proceeds deriving from that.

Article 10. Cooperation

The manner, scope, and deadlines of cooperation are to be agreed upon between the partners in keeping with the specific conditions of the scientific-technical performance. Cooperation obligations particularly exist:

1. In the drafting of the specifications;

2. During the justification;

3. During the conduct of tests or participation in tests;

4. During functional tests and performance trials;

5. During the development of the technology;

6. During the introduction of the results into practice all the way to the attainment of the agreed-upon coefficients and

7. During the implementation of patent-law measures.

Article 11. Quality

The partners must arrive at agreements on the quality of the scientific-technical results on the basis of the scientific-technical and economic objective. Quality determination in particular includes the technical, technological, and economic coefficients of the results, the operational reliability of the products, the quality of protection and the guarantee of environmental protection, the requirements for the design of product shapes, and the requirements of standardization as well as the patent protection capability to be attained for the results.

Article 12. Warranty

(1) The warranty in particlar includes the correct execution of the performances agreed upon in the contract, including the foreseeable further development of the scientific-technical state of the art for the period of time necessary for production preparation, the technical feasibility and the economic usefulness of the result, as well as the functional and performance capacity of the product or process in keeping with the specified coefficients or those assumed according to the contract.

(2) The partners can enter into different agreements, to the extent that this is required by the specific conditions of the performance.

Article 13. Legal Warranty Period

(1) The warranty period is to be agreed upon in the light of the type of performance betwe n the partners unless a warranty period has been determined in legal regulations or by the government agencies authorized to do so. If the partners did not enter into any agreement or if no determination was made, then the warranty period shall be 1 year.

(2) The warranty period for performances connected with product development and the designs of series-produced products does not terminate prior to the expiration of the warranty period for the first product manufactured by the customer [as published] on the basis of the development results. For development and design performances relating to the manufacture of individual products and for planning performances, the warranty period ends with the expiration of the warranty period for the product or plant made on this basis.

(3) The warranty period for processes ends with the expiration of the warranty period for the first installation erected which works according to this process in the context of the planned commodity production effort or the first product which is made by the customer according to this process in the context of planned commodity production in an already existing plant [installation].

Article 14. Patent Law Tasks and Publication of Work Results

(1) The partners must agree on the subjective, time, and local scope of freedom from general warranty and must carry out the patent-law tasks in the GDR and abroad in keeping with the requirements of the scientific-technical performance.

(2) Unless other agreements have been enterred into, a publication of scientific-technical results requires the prior approval of the other partner.

Article 15. Justification before Customer

The customer may demand that the contractor justify the scientific-technical objective, the result of individual work steps, or the scientific-technical results before him. This does not apply if the regulations call for a justification before a specific body and if the customer is represented on that body.

Article 16. Performance and Acceptance Timing

Unless otherwise agreed upon, the customer must, within one month after the forwarding of the scientific-technical result, declare the acceptance of the performance or the refusal to accept it. If the performance is accepted, it is considered to have been fully rendered upon transfer of the results. If, within the prescribed or stipulated deadline, the performance is not accepted or if acceptance refusal is declared, then the legal consequences of acceptance delay become effective after the expiration of the deadline.

Article 17. Billing

The billing statement must not be delivered prior to the day of acceptance. Unless otherwise specified in the legal regulations on in the contract, the contactor must forward the billing statement at the very latest 10 workding days after acceptance. The right to send out a billing statement in the case of acceptance delay according to Article 59, Paragraph 4, of the contract law, is not affected by this.

Chapter 3. Giving Scientific-Technical Results for Remunerated Use

Article 18. Development of Contract Content

(1) In contracts on giving scientific-technical results, it is necessary to enter into agreements as to the utilization purpose and the utilization scope, the description of the patent-law situation by the contractor, the freedom from general warranty, the procedure in case of conclusion of utilization contracts with additional interested parties, and use in the context of international research cooperation. If there is to be export of scientific-technical results, then the agreements must be entered into in accordance with the provisions of international-law contracts or international-economic contracts.

(2) Usable results within the meaning of this implementing decree are results of research and development and enterprise-organizing and economy-organizing solutions. Usable results are also inventions and innovations protected by economic patent rights in accordance with the legal regulations if scientific-technical or economic documents have been turned over for their use or if production experiences are being transmitted or if the surrendering enterprise provides support.

(3) Those economic units are entitled to give out scientific-technical results which fully or partly finance the results from in-house funds or government budget funds or which worked out the results or acquired them through contract. The economic units are obligated to offer results available to them to other economic units for use.

(4) The remunerated transfer of scientific-technical results for use can be ruled out contractually only if this has been so spelled out in the legal regulations or if there are national economic requirements for this. This applies also to the conclusion of contracts on research and development.

(5) Planning performances, whose use is regulated in special legal regulations, are not subject to remunerated use within the meaning of these provisions.

Article 19. Giving Processes

(1) Unless otherwise specified in the legal regulations or in the contract, the following are included in the contractor's performance volume in connection with the transfer of processes:

1. The transfer of process documentation;

2. The transfer of start-up, operating, and damage-control instructions;

3. The checking of the project for agreement with process documentation and the confirmation of their correctness in terms of process engineering, as well as their agreement with the regulations on health protection and work safety as well as fire protection;

4. The conduct of the necessary experiments;

5. Measures for the advanced training of operating, maintenance, and management personnel;

6. The management of trial operation;

7. Advising the customer on the use of the process.

(2) The partners must furthermore enter into agreements on the cooperation of the partners up to the actual commissioning of the plant to be erected, the performance trials and certificates, and the obligations connected with the conduct of functional tests.

Article 20. Warranty

(1) The contractor guarantees that the result will be usable to the extent agreed upon.

(2) The warranty period for the scientific-technical results, given for remunerated use, ends in case of results of product development and in case of constructions [designs] in accordance with the provisions of Article 13, Paragraph 2, in the case of the transfer of a process in accordance with the provisions of Article 13, Paragraph 3, and in all other cases, upon expiration of the warranty period in accordance with the provisions of Article 13, Paragraph 1.

Chapter 4. Testing Performance

Article 21. Basic Principle

(1) If the performance consists of testing, the contractor is obligated to perform the test according to the agreed-upon program and to give the result to the customer. The customer must cooperate in the manner agreed upon, in particular, he must supply the contractor with the object to be tested, and he must accept the testing result and pay the price.

(2) The contractor is obligated to return the test object. This does not apply if the test consists of the consumption of the object and if it cannot be performed without destruction. The partners then can agree on something else.

(3) If a process is being tested, the partners should enter into agreements concerning the use of the results made by the process.

(4) The partners should enter into agreements concerning the development-connected risk arising from the testing operation. If the test is conducted at the facility of the subsequent user, the risk should be shared.

Article 22. Additional Rights and Duties

(1) If unforeseen changes take place in the testing object during testing, the client must immediately be informed. He must decide on the continuation of the test.

(2) If there is a threat of damage due to testing, the test must be interrupted. If necessary, the contractor must dismantle the test object or perform an analysis of the test material.

(3) The contractor may not make any changes on the object to be tested without approval from the client unless the testing goal calls for a change in the testing object.

Chapter 5. Liability

Article 23. Contract Fine and Damage Restitution

(1) To allow for the risk arising from the specific conditions and the type of performance as well as the damage to be expected in case of contract violation, the partners may agree upon the amount of the contract fine and the extent of damage restitution in deviation from the determinations contained in the contract law or in other legal regulations. The stipulated scope of the damage restitution obligation must not fall below the price to be paid for the performance.

(2) Agreements on restricting the scope of damage restitution obligation do not take effect if the contract violation is due to a coarse violation of the obligation to exercise care which must be complied with during the implementation of scientific-technical performances.

(3) If a contract fine is to be ordered because of failure to meet interim deadlines, this requires prior agreement. This does not apply to scientific-technical performances in preparation and execution of investments.

(4) There is no obligation on the part of the contractor to pay a contract fine or to make damage restitution if the performance is not to be paid for by the client according to the legal regulations. If the contract violation is due to a coarse violation of the obligation to exercise care during the implementation of scientific-technical performances, the contractor must make restitution for the damage arising due to contract violation.

Article 24. Exclusion of Warranty Demands

(1) Warranty demands are ruled out if the contract violation is due to circumstances which the contractor was unable to avert in spite of using all possible care and considering advanced scientific-technical discoveries and work methods. In this case, the contractor is obligated either immediately to correct any reported deficiencies at the expense of the client or to make restitution. The partners may agree on something else.

(2) The demand for follow-up improvement or substitute performance is ruled out if it calls for an expenditure that cannot be justified in terms of the national economy and if the client can be expected to make use of the object of the performance. In this case, a reduction corresponding to the scope of the deficiency is to be granted.

Chapter 6. Concluding Provisions

Article 25.

This implementing decree takes effect on 1 July 1982. It applies to all economic contracts which are to be fulfilled after its entry into force.

5058
CSO: 2300/279A

IMPLEMENTING DECREE ON INVESTMENT, MAINTENANCE CONTRACTS

Discussion of Decree

East Berlin WIRTSCHAFTSRECHT in German Vol 13 No 2, Apr-Jun 82 pp 106-109

[Article by Harri Walter, chief justice, Central Contract Court, and chief, investment department of contract court: "Economic Contracts on Investments and in Maintenance of Capital Goods--On the Second Implementing Decree (DVO) to the Contract Law." A translation of the contract law is published in JPRS 80875, 21 May 82, No 2272 of this series, pp 24-73. A translation of the implementing decree discussed below follows this article]

[Text] The regulations of articles 63 ff. of the contract law and the second implementing decree (DVO) to the contract law more or less follow the proven basic principles of the eighth DVO to the contract law,[1] which is in force at the present time. Simultaneously demands--emerging from the 10th SED Congress--for increasing the effectiveness of investments were taken into consideration.[2] Furthermore, the cooperation regulations concerning investments are characterized by the following goals or principles:

--The second DVO was coordinated more effectively with the regulations on scientific-technical services. It is evident, for instance, from the fact that general projection services are included in the first DVO to the contract law, in accordance with their character. Specific peculiarities relating to investments result from the regulations of the second DVO.

--The second DVO includes only economic contracts on investments and on the maintenance of capital goods. As a consequence legal developments were taken into consideration that occurred in recent years in the field of investments, applying to specific regulations governing investments, including the appropriate cooperation norm.[3]

--The full acceptance of the responsibility for preparing and implementing investments through combines and enterprises is supported by cooperation regulations which for the first time regulated basic rights and basic duties

for the respective economic contract. Because of the incorporation of two major forms of economic contracts into the contract law which apply to the preparation and implementation of investments, the respective basic rights and basic duties are regulated in a stable manner over a longer period of time.

--Compared to the eighth DVO to the contract law (old), a considerable number of separate regulations on the contract content could be eliminated, because basic regulations on the contents of service contracts from the third chapter of the third part of the contract law apply.

--The inclusion in the contract law of legal institutes, such as claims following the expiration of warranty periods or in cases of economic sanctions, the necessity was eliminated to retain the appropriate regulations from the eighth DVO to the contract law (old) and include them in the second DVO.

Below a discussion follows of the motives and some of the problems inherent in the continuing development of regulations in the contract law and the second DVO:

Scope of the Second DVO to the Contract Law

In comparison to the actual scope of the eighth DVO to the contract law (old), which dealt with the major forms of the complex reproduction of basic assets, the subject matter of the second DVO was reduced. In the second DVO, cooperation relations on general economic investigations of basic assets are no longer regulated. In this matter the regulations of the first DVO to the contract law apply exclusively. Furthermore, service agreements are no longer covered by the second DVO; instead the general regulations on service contracts (articles 69 ff. of the contract law) apply. With respect to personnel matters within the scope of the second DVO the term of subcontractor was dropped. In article 1, section 1, item 2 of the eighth DVO to the contract law (old) this term raised questions with respect to the classification of enterprises. In its place, article 2, section 2 of the second DVO to the contract law referenced to economic units that provide construction services or carry out equipment assembly. Within the expanded cooperation chain, the second DVO includes primary suppliers of these economic units. On the other hand, the second DVO only applies to economic units which supply projection services. Not included, for instance, are their material suppliers. Article 1, section 3 of the second DVO points to the admissibility of applying regulations intended for other contracts if the second DVO does not contain regulations and the others do justice to the principles of this implementing decree. In a case of a shipment of capital goods, for instance, the regulations of article 67 of the contract law apply. For projection services during the preparation of objectives, the preparation and implementation of investments and the implementation of maintenance services, the regulations of the first DVO apply, because the second DVO contains no specific regulations

on projection serivces. Thus, article 13, section 2, item 2, for instance, or article 24 of the first DVO to the contract law applies to the respective projection contracts. For the conclusion of contracts, however, specific prerequisites pertaining to investments apply, in accordance with the respective parts of the second DVO. Legal regulations on import (article 1, section 3 of the second DVO) have priority over the second DVO.

Cooperation Relations During the Preparation of Objectives

The new version of article 3, section 6 and article 4, section 1 of the investment preparation decree, as found in the third decree of 30 October 1981 on the preparation of investments,[4] regulated for the first time the fact that the preparation of qualified objectives urgently requires the cooperation of enterprises and projection establishments in the capital-goods industry and the building trades. It was taken into consideration when formulating the regulation of article 4 of the second DVO, among other things, through the elimination of a former requirement--article 4 of the eighth DVO to the contract law--according to which contracts had to be concluded at each step. Rather, a reciprocal contract requirement had to be regulated between the investment contracting agency and contractors (included are, above all, enterprises and projection establishment of the capital-goods industry and the building trades, technical suppliers, etc.). The comprehensive term of contractor was used for enterprises that may be considered as possible partners of investment contracting agencies. This term offers the advantage of avoiding the enumeration of a large number of enterprises at several places. In addition to the investment contracting agency, the term of contracting agency is used within the cooperation chain, because the partner relationship requires that a distinction be made between the contracting agency and the investment contracting agency. Article 4, section 1 of the second DVO omits the regulation on prerequisites for contract conclusions on the part of contracting agencies, because regulations on this matter would not have been outside the basic principles for contract conclusions as contained in the contract law. As a rule, this phase of the reproduction process especially lacks concrete plan decisions on specific investment projects. On the part of contractors, the conclusion of a contract, among other things, depends on the existence of a balancing decision on projection services, as long as these services are subject to the balancing regulation.[5] Among other state plan decisions is the establishment of object lists. The contents of contractor cooperation is regulated through article 4, section 2 of the second DVO, especially with respect to projection services for the preparation of technical, technological and economic factors for the preparation of investment projects.[6] In accordance with the regulations of the newly revised article 3, section 6 of the investment preparation decree, the data that is to be transmitted--including necessary variables and tolerances--have a binding effect on the contractor and are the basis for the establishment of appropriate technical parameters and economic targets within the objectives.[7]

Economic Contracts for the Preparation of Investments

During the 10th SED Congress the demand was raised for a substantial improvement in investment preparations, which led to additional considerations with respect to the establishment of appropriate legal cooperation regulations. The principle of full responsibility of the investment contracting agency for the preparation of investments--firmly established in the investment preparation decree--is the basis for the regulations of articles 63 ff. of the contract law as well as articles 5 ff. of the second DVO.

The regulation of article 63 of the contract law labels the submission of binding offers, which are to be prepared on the basis of technical, technological and economic factors in conformance with stated objectives, as the main duty of contractors within the phase of the investment preparation. Consequently, proceeding from the twofold character of the binding offer more consideration is accorded to securing early material-technical guarantees of investments and simultaneously it is oriented toward steering away the investment contracting agency from exclusive cooperation with contractors in investment services. This basic idea reappears in the regulations on general and major contractors (article 65, section 2 and article 66, section 2 of the contract law). The regulation of article 63, section 2 of the contract law states the main duty of the contracting agency, which is to cooperate in the established manner, to accept the binding offer and pay the price. In this respect the concrete cooperation duty of the contracting agency can be required in special legal regulations, but it can also be the result of contractual agreements. Obligatory contract conclusions and a detailed legal format of preparational contracts were regulated in articles 5 ff. of the second DVO. On the part of the contracting agency, prerequisites for contract conclusions will remain the same as those regulations that have been in effect to date (Article 6, section 1 of the eighth DVO to the contract law [old]). On the part of the contractor, the comments under article 4, section 1 apply. The emphasis of balancing decisions on projection services as a prerequisite to contract conclusions corresponds to the regulations of the planning ordinance.[8] Partial deviations, which occurred in practice, could not be sanctioned by the second DVO. A proven regulation was included in the second DVO, calling for a qualified obligation to conclude contracts whenever enterprises were designated by the central planning authorities to conduct preparations. In these instances the existence of projected balancing decisions is not a prerequisite for the contract conclusion. Article 6, section 3 of the eighth DVO to the contract law (old) was incorporated in the regulation of article 5, section 3 of the second DVO. Otherwise the responsibility of combines to coordinate the services of legally independent preparation and implementing enterprises would be shifted to contracting agencies. Proceeding from the concept that the binding offer was to be prepared and submitted under the responsibility of the subsequent implementing enterprise, in recent years general managers authorized these enterprises in almost all instances to conclude the preparatory contract and the implementing contract. This development also has the explicit approval of the state contract court. To guarantee

a thorough and rational preparation, the regulation of article 6 of the second DVO is oriented toward coordinating the preparatory contract--including content and extent of the binding offer--considering the specific conditions of the investments as well as the services required for the implementation. This orientation must also apply unconditionally to general and major contractors, since earlier regulations on the content of binding offers had already been repealed with the investment preparation decree. Article 6, section 2 of the second DVO provides a direct orientation for coordinating the contract content. At this point it must be reemphasized that only specific investment peculiarities of the preparatory contract are regulated in article 6, section 2. Orientations for arranging service terms etc. are to be found in the basic regulations on service contracts in articles 41 ff. of the contract law. In addition to existing regulations and in accordance with article 5, section 2, item 7, agreements are to be made concerning proof of meeting the targets established through the confirmed objectives. In this respect, maintaining the norms for investment expenditures and construction time must be in the foreground.

Contracts for general project planners, which are regulated in article 7 of the second DVO, are more or less the same as the regulation of article 23 of the eighth DVO to the contract law (old). In contrast to the existing regulation, however, it became mandatory that the transfer of the appropriate tasks to projection establishments was to be based on the premises that the use of a general project planner was to be included when the objectives were established. Such a regulation is necessary in the interest of an effective use of available projection capacities. Furthermore, the general project planner's obligation to secure binding offers for the investment contracting agency was stated in a binding manner. The purpose of this expanded development of the contract for the general project planner is to contribute consistently to the material-technical guarantee of subsequent investment implementations parallel to the technical and technological clarification of the investment task.

Economic Contracts on Implementing Investments

The enforcement of the resolutions passed by the party and the government to increase the speed of social rationalization and modernization of existing capital goods requires a concentration of investments on projects and objects of high scientific-technical levels to guarantee the shortest realization period possible.[9]

From the legal view of cooperation, these requirements are satisfied by the concept of prerequisites for contract conclusions as well as the contract content for the implementation of investments. In article 64 of the contract law, the basic rights and basic duties are regulated which result for the partners from contracts to be concluded for the implementation of investments. The contractor's obligation to provide services can consist of performing construction work, the supply and assembly of facilities or equipment, the

exclusive shipment of products (for instance, of capital goods) or the provision of other services (like implementation projects) and can be intended for one of three categories of investments listed in article 64 of the contract law. On the part of the contracting agency an obligation exists for cooperation, acceptance of the goods or services and payment of the purchase price.

The regulations in article 65 ff. of the contract law contain general requirements for contract conclusions and services for enterprises that provide services as main or general contractors. For the general contractor the service requirements consist of uniform management, the coordination and control of all necessary work to be performed for the erection or restoration of complete, usable production sites, technological facilities, buildings or housing complexes.[10] Simultaneously, for the first time the contract law established standards for general contractors and select major contractors (article 66, section 2 of the contract law) for the submission of binding offers. The content of prerequisites for contract conclusions, regulated in article 9 of the second DVO, corresponds more or less to the regulations of article 9 of the eighth DVO to the contract law (old). On the part of the contracting agency, the basic decision as well as state plan targets must be available. On the part of the contractor the required service must agree with the state plan tasks or plan quotas of the annual economic plan. Among the other state plan decisions are balancing decisions. In this area the regulations of article 5, section 5 and 8 of the construction balancing decree apply at the present time to construction projects, which means that the existence of the building balancing decision is a mandatory prerequisite for the contract conclusion. With respect to equipment, the regulations of article 16 of the decree of 15 November 1979 are in effect. They cover the balancing of material, equipment and consumer goods.[11]

Article 9, section 3 was a new addition. It requires that contracting agencies prove the existence of the prerequisites for the contract conclusion in accordance with the legal regulations. This regulation is a contributing factor in making sure that investment service contracts are only concluded for legitimately prepared and planned projects. It is the obligation of the contracting agency to supply the proof required by law in all phases of cooperation. The conclusion of the contract, however, can by no means be made dependent on the existence of the confirmation entry on title lists.[12]

In accordance with the regulations in articles 41 ff. of the contract law and articles 10 ff. of the second DVO, the format of the contract content is to be arranged by the partners in such a manner that the investment is implemented systematically and that the technical and economic targets established through the basic decision are met or surpassed. In this respect, the regulations of article 10, section 2 contain exemplary orientations for the required contract agreements dealing specifically with investments. Considering the specifics of the investment and the specifics of the required services, the partners must decide on the concrete agreements that are necessary.

One demand raised during the discussion, dealing with the continuing development of legal regulations in individual cases could not be followed through. The goal was to establish binding contracts for building projects balanced in the annual plan and to impose sanctions if these services--excluding those listed in thousands or millions of marks--are not materialized. Regulations that deal with the contract content must be oriented toward the shortest time possible for construction and assembly and the systematic completion of usable projects, partial projects and objects. The regulation in article 10, section 1, item 1 of the second DVO deals with this matter; accordingly, technologically and economically feasible interim dates as well as final dates are to be agreed upon, based on the planned timetable.[11] The orientation toward the fulfillment of the values balanced for the plan year would support tendencies for the preferential treatment of value-intensive production at the expense of the planned construction and assembly programs. Guarantees would have to be established, however, that independent of the causes for the nonrealization of the balanced values listed, the investment contracting agency is to be placed in a position that will enable it to notify right away the balancing organ of its needs for the following year. These requirements were met with the regulation in article 14, section 2 of the second DVO.

In addition to the regulations of the eighth DVO to the contract law (old)--dealing with cooperation activities--article 13, section 1 of the second DVO to the contract law added new duties, requiring partners to agree on the content, the extent and the dates of the transferral of work records by the contracting agency. It also contains an appropriate reporting requirement for the contractor. This addition as well as the regulation concerning an appropriate determination of contract violations in article 29, section 3 of the second DVO is to support the orderly transfer of necessary work records by the contracting agency, because it is crucial for conducting effective and systematic investment activities. The regulation of article 14, section 2 of the second DVO was also new; it contains a general requirement for the contractor, according to which he is to take part in control deliberations with members of the contracting agency and implement jointly established measures. This regulation corresponds to justified demands by contracting agencies to establish fundamental duties in connection with control deliberations.

Contract changes that affect specific prerequisites for investments are standardized in article 15 of the second DVO. In consideration of the requirements of the investment preparation decree for changes in the basic decision, two cases had to be distinguished with respect to the prerequisites for contract changes. With that in mind, the regulation of article 14, section 5 of the eighth DVO to the contract law (old) had to be modified. If a basic decision has to be newly formulated in accordance with the current regulation of article 9, section 4 of the investment preparation decree, the contract change can only be made on this basis. In all other instances, a contract change, calling for deviations from the stipulations of the basic decision,

requires the approval of the manager who made the basic decision. The existence of his approval is verified, for instance, with the confirmation of title lists for the respective plan year, if appropriate agreements were precisely defined from the basic decision to the realization process.

Compared to the regulation of article 15 of the eighth DVO to the contract law (old), the acceptance regulations of article 16 of the second DVO contain further developments in a twofold manner. First, the twofold use of the term acceptance--acceptance by partners and through controlling, inspection and supervisory organs--was abandoned. Instead the decisions by the above-mentioned controlling, inspection and supervisory organs are called approval measures. At the same time, the term approval also includes acceptance by the state, in accordance with other legal regulations.[13] Secondly, the legal fiction of acceptance in article 15, section 5 of the eighth DVO to the contract law (old) was removed, because this concept was combined with considerable disadvantages. The new regulation in article 16, section 5 of the second DVO proceeds from the premise that in extraordinary cases the use of investment services may be necessary for economic reasons even before its acceptance. It is permissible only on the basis of a concluded user contract. These regulations, the violation of which, among other things, will lead to sanctions in accordance with article 29, section 4 of the second DVO, will contribute to an increase in state and contract discipline in investment activities. Therefore it will be impossible in the future to include incomplete and unaccepted goods and services in the total of goods produced and to demand payment. Simultaneously contracting agencies will be more inclined than they have been to date to remove existing defects or perform remaining services as soon as possible. If the exception applies and the use is necessary for economic reasons before the goods or services have been accepted, the user contract must also contain agreements on the completion of outstanding services along with the conditions for the use of the project or the service. It is also understood that the conclusion of a user contract can be mandated by a decision of the state contract court if all the other prerequisites have been met in accordance with article 16, section 5 of the second DVO. With respect to warranties, a standardization was introduced to bring the regulations in conformance with the contract law. Whereas a warranty period agreed upon by the partners was considered a legal warranty period in accordance with the regulations of article 17 of the eighth DVO to the contract law (old), according to the regulations of article 18 of the second DVO, the legal warranty period for construction projects is 2 years and for equipment it is 1 year, as long as regulations by the competent state organs do not rule otherwise. According to the new regulations there is only room for an agreement between partners if a longer warranty period is involved.

Economic Contracts on the Maintenance of Capital Goods

The fifth part of the second DVO adopted most of the proven regulations of the eighth DVO to the contract law (old), for instance, the regulations covering the offer or the extent of services. Article 23, section 1 of the second

DVO to the contract law contains the basic rights and basic duties of the contractor and the contracting agency and the basis for the contract conclusion (state plan decisions in accordance with article 12 of the contract law). Certain measures that are not considered investments are to be prepared and implemented in the same manner as investments, in accordance with the legal planning and investment regulations. Currently regulations apply to modernization measures for multistory residences in accordance with article 1 of the implementing regulations of 13 July 1978 to the investment preparation decree.[14] In the interest of regulation stability, article 23, section 2 of the second DVO does not only include the specific case mentioned above but all maintenance services that are to be prepared and implemented like investments. With respect to the application of article 24 of the second DVO, the principles of the relationship between specific and general regulations--which has already been explained--apply as well. Also in this area only examples were formulated of orientations for the arrangement of the contract content.

The warranty regulation for maintenance services (article 27 of the second DVO) is limited to the warranty period. The content of the warranty is based on the legal warranty period established through state quality regulations, contractual agreements and the usefulness of services as listed in the contract, including built-in parts. In article 28 of the second DVO, peculiarities for the implementation of maintenance and modernization services in apartments and apartment buildings were regulated for the first time. To safeguard justified tenant interests, article 28, section 1 formulated specific requirements dealing with the preparation of plans for construction timetables and the agreements covering building permits. A legal requirement was now regulated for the contractor, according to which the time required for the construction project has to be specified separately by rooms and days required. As a result the requirements are high for the preparation of these construction measures since, for instance, the extent of the required construction measures since, for instance, the extent of the required construction work has to be ascertained exactly at least for each apartment. Simultaneously it requires an orderly cooperation between contracting agencies and contractors during the planning and preparation of modernization and maintenance services, which in part must also include consultations with the tenants. In article 28, section 2 of the second DVO, a legal requirement was established, according to which agreements are to be made on the acceptance of specific product lines or services. A prerequisite for such agreements, which deviate from general principles, is the fact that the services are useful to the tenants or the contracting agency. At the same time justified interests are met of tenants or contracting agencies in occupied buildings who are able to benefit from short-term completions of projects, independent of the acceptance of the final completion of all the work that needs to be done on the building.

FOOTNOTES

1. Following eighth DVO to the contract law (old).

2. Cf. report of the SED Central Committee to the 10th SED Congress; reporter: E. Honecker, Berlin, 1981, p 57 ff.

3. The decree of 13 July 1978 on the preparation of investments (GESETZBLATT, Part I, No 23, p 251) followed by the investment preparation decree and finally the decree of 27 March 1980 on the implementation of investments (GESETZBLATT, Part I, No 13, p 107) abolished the complex basic-assets regulations from the year of 1970.

4. GESETZBLATT, Part I, No 32, p 373.

5. It applies, for instance, to the cooperation by projection establishments and enterprises in the construction industry on the preparation of tasks in accordance with the decree of 15 May 1980 on construction balancing and construction projection balancing (GESETZBLATT, Part I, No 15, p 127), followed by the construction balancing decree.

6. For the respective investment projection project, agreements must be reached on the services to be provided by the contractor, in accordance with the requirements of the supplement to the investment preparation decree, loc. cit.--orientation for the content of the objectives.

7. Cf. O. Drasdo, E. Fenske and H. Walter, "Zur Anwendung der Dritten Verordnung ueber die Vorbereitung von Investitionen" [On the Application of the Thi i Decree on the Preparation of Investments], in this issue p 127.

8. Part L, Section 20, item 3.3 of the supplement to the decree of 28 November 1979 on the ordinance on planning the GDR economy between 1981 and 1985 (GESETZBLATT, special edition, No 1020 1).

9. Cf. From the politburo report to the Third SED Central Committee meeting; reporter: E. Honecker, Berlin, 1981, p 36.

10. Cf. articles 13 ff. of the investment implementing decree, loc. cit., as well as item 4 of the instruction No 1, 1981 of the state contract law of 17 July 1981 on principles regarding contract writing activities of the state contract law for investment services by major and general contractors (directives and information, state contract law, No 2, 1981).

11. GESETZBLATT, Part I, 1980, No 1, p 1.

12. Cf. H. Walter, "Planmaessig investieren setzt gruendliche Vorbereitung vorous" [Systematic Investments Require Thorough Preparation], DIE WIRTSCHAFT, Vol 10, 1980, p 6.

13. Article 21 of the decree of 30 October 1980 on energy management in the GDR--energy decree (GESETZBLATT, Part I, No 33, p 321).

14. GESETZBLATT, Part I, No 23, p 251.

Text of Decree

East Berlin GESETZBLATT DER DEUTSCHEN DEMOCRATISCHEN REPUBLIC in German Part I No 16, 29 Apr 82 pp 329-333

[Official text of "Second Implementing Decree to the Contract Law--Economic Contracts on Investments and on the Maintenance of Capital Goods-- 25 March 1982" signed by Willi Stoph, chairman, GDR Council of Ministers]

[Text] On the basis of article 117, section 1 of the contract law of 25 March 1982 (GESETZBLATT, Part I, No 14, p 293), the following regulations will go into effect:

Part I--General Regulations

Article 1--Scope

Section 1--This implementing decree regulates the conclusion and fulfillment of economic contracts for the preparation of objectives, the preparation and implementation of investments as well as the maintenance of capital goods.

Section 2--This implementing decree applies to the cooperation chain, including the suppliers of the economic units which perform construction projects or equipment assembly as well as to the relationship to the economic units that produce projection services. The equivalent applies to the cooperation chain involved in maintenance services.

Section 3--Regulations in effect for other economic contracts apply if this implementing decree does not contain appropriate regulations and whenever they are in agreement with the kind of services as well as principles of this implementing decree. With respect to economic contracts on imports, legal regulations adopted for that purpose are in effect.

Article 2--Tasks of Economic Contracts

Section 1--The economic units are to organize their cooperation through economic contracts on the basis of state plan decisions in such a manner that

the systematic transferral of new products and procedures is guaranteed, the preparation and implementation of the investments is based on meeting the advanced progressive international standards of scientific-technical results and the requirements of socialist intensification and rationalization are fulfilled.

Section 2--The economic units are to use the economic contracts to prepare the investments in accordance with the legal regulations,to guarantee that the project starts on time and proceeds with a high degree of productivity and effectiveness as well as to support the lowering in investment costs and reducing the construction and assembly time.

Article 3--Format of Economic Contracts

Economic contracts on investments and on the maintenance of capital goods are to be concluded in writing.

Part 2--Economic Contracts for the Preparation of Objectives and for the Preparation of Investments

Article 4--Contracts on the Preparation of Objectives

Section 1--The investment contracting agency and the contractor are to conclude contracts on services for the preparation of objectives on the basis of the balancing decisions on projection services or other state plan decisions. The equivalent applies to the relations within the cooperation chain.

Section 2--The contract on services for the preparation of objectives obligates the contractor to produce particularly projection services for the preparation of technical, technological and economic factors for the preparation of an investment project. The contracting agency is obligated to cooperate in the prescribed manner, to accept the services and pay the price.

Contracts on the Preparation of Investments

Article 5

Section 1--The investment contracting agency and the contractors are to conclude contracts on services for the preparation of investments on the basis of state plan targets for investments, the confirmed objectives, the balancing decisions on projection services or other state plan decisions. In cases where the preparation of an investment project has been centrally planned, the economic units involved in the plan of preparation are obligated to conclude a contract. The equivalent applies to the relations within the cooperation chain.

Section 2--Whenever services for the preparation and services for the implementation of an investment project are provided by several enterprises of a combine, the contract on the preparation and the contract on implementing the investment are to be concluded through a combine enterprise designated by the general manager of the combine.

Article 6

Section 1--By concluding and fulfilling the contract, both partners are providing guarantees that a rational preparation takes place in accordance with the specific conditions of the investment, maintaining or improving the established goals stated in the objectives, as well as carrying out necessary research and development tasks that agree in content and time with the investment preparation and become effective with the investment.

Section 2--The contract is to contain special agreements on

1. the content and extent as well as an appropriate format of the firm offer and other documents suitable for examination by the contracting agency and in accordance with legal regulations,

2. the terms for examining the firm offer, including the firm price quoted by the contracting agency and for the cooperation of the contractor during the examination,

3. the cooperation activities of the contracting agency, such as content, extent and date of the transfer of work documents,

4. the preparation of rational construction site facilities,

5. the projected time period for implementing the investment service,

6. the proof concerning the state of development of new scientific-technical solutions in accordance with the legal regulations,

7. proof of adherence to the targets contained in the confirmed objectives and binding investment costs and construction time norms.

8. the cooperation for guaranteeing capacities for implementing the investment, especially with respect to planning on time and to balancing.

Section 3--Upon delivery of the binding offer, the contractor is to transfer to the contracting agency the result of agreements made with balancing organs to incorporate in the balances deliveries and other services contained in the binding offer.

Section 4--Whenever the contractor ascertains that the established goals confirmed in the objectives cannot be met,he is obligated to notify the contracting agency immediately and to suggest suitable ways for solutions. The contracting agency is to introduce measures to guarantee a short-term decision on the continuing investment preparation.

Section 5--The contractor is obligated to conclude the contract for implementing the investment on the conditions of the binding offer. The fixed terms of the offer that are to be agreed upon are to extend over the period necessary for establishing the prerequisites for concluding the contract for implementing the investment. The earliest date for ending the binding offer is 1 month following the expiration of the data applicable to the project and the contracting agency.

Article 7--Contracts on the Production of Services for General Project Planners

Section 1--The investment contracting agency and a projection facility are to conclude a contract on the production of services as a general project planner as long as it was prescribed in the confirmed objectives. The projection facility is obligated to conclude a contract on projection services on the basis of the balancing decision or other state plan decisions.

Section 2--The contract obligates the general project planner to provide the agreed-upon projection services and to fulfill the tasks of investment preparation for the investment contracting agency to seek, in particular, binding offers. The investment contracting agency is obligated to cooperate in the prescribed manner to accept the services and to pay the price.

Section 3--If binding offers are made to the general project planner by contractors, they also apply to the investment contracting agency.

Section 4--If the general project planner assumes the tasks of the major contracting agency, article 22 applies accordingly.

Article 8--Contracts on the Coordination of Investments

Section 1--The investment contracting agency and economic units responsible for subsequent investments are to conclude contracts on the coordination of investments. The contract is to contain special agreements on

1. the coordination of function, location and timing of the investment with subsequent investments,

2. the extent and time for the replacement, removal and modification of capital goods as well as the provision of material and financial means in accordance with the legal regulations,

3. the necessary information on the status of the preparation and implementation of the investments,

4. the cooperation of investment contracting agencies in the preparation of objectives and preliminary documents for subsequent investments in accordance with the legal regulations.

Section 2--On the basis of the confirmed objectives, the investment contracting agency is to conclude coordination contracts on the preparation of future service relations with contractors who are to provide services during the implementation of the investments and who do not have to supply binding offers to this effect. The equivalent applies to the relations within the coordination chain.

Part 3--Economic Contracts on the Implementation of Investments

Article 9--Contract Conclusion

Section 1--On the basis of the basic decision, the state plan targets for investments and other state plan decisions, the investment contracting agency and the contractors are obligated to conclude contracts covering the entire period of the implementation of the investment. The equivalent applies to the relations within the cooperation chain.

Section 2--As long as the prerequisites prescribed in the legal regulations are available, the conclusion of the contract on implementing investments can take place before the basic decision.

Section 3--The contracting agency is obligated to prove to contractors the existence of the prerequisites for contract conclusions.

Article 10--Format of Contract Content

Section 1--Through appropriate agreements the partners are to provide guarantees that the investment will be implemented systematically and that technical and economic targets established by the basic decision will be fulfilled and improved.

Section 2--The contract is to contain special agreements on

1. technically and economically essential timetables covering the beginning, interim as well as final terms and also building permit provisions,

2. the exact date when the preliminary price is to be changed into the final industrial price,

3. the installment payments in accordance with the legal regulations,

4. the rational establishment and use of the building site equipment as well as the reuse of equipment and materials,

5. the care and social and cultural welfare of the workers at the building site,

6. measures for qualifying plant, maintenance and supervisory personnel,

7. quality control, operating tests, trial operation and performance proof as well as the acceptance,

8. the services by the contractor after acceptance, until the designated target is fulfilled,

9. the measures for a systematic preventive maintenance.

Article 11--Extent of Services

Section 1--The extent of services is to be agreed upon in a manner that will guarantee concentrated construction and assembly implementation and the shortest construction times as well as an efficient management organization and structure in cooperation relations.

Section 2--The contractor is obligated to hand over documentation required for the application of the services, such as proof of available health, work and fire protection measures, guarantees for the implementation of the project, revision documents and operating and maintenance regulations. The extent of the documentation is to be agreed upon. As long as legal regulations or the contract do not indicate otherwise, the transferral of the documentation is to take place no later than the date of acceptance of the service.

Article 12--Price

Section 1--The agreement on the price is to be based on the binding offer confirmed by the basic decision, in accordance with the legal regulations.

Section 2--The agreed-upon price can only be changed in accordance with the legal regulations.

Article 13--Cooperation

Section 1--The investment contracting agency is to support the contractors during the fulfillment of the contracts. In the process all possibilities are to be exhausted for the rational establishment and use of building site facilities, for the optimization of construction site transportation, for

the safety of the construction site as well as for the material, social and cultural welfare and care of the workers at the construction site. As a matter of principle, the investment contracting agency is to provide the operating, maintenance and supervisory personnel, the means and the raw materials for the trial operation. Content and extent of cooperation are to be agreed upon in the contract. The equivalent applies to the relations within the cooperation chain.

Section 2--Agreements are to be made on the content, the extent and the time for building permits granted by the respective contracting agency as well as on the work papers that are to be handed over. As long as no other agreements have been made, the terms for granting building permits that were agreed upon at the ouset of the construction and assembly project will be in effect. Failure to grant building permits on time or interruptions as well as violations of the agreements on the content or extent of work documents that are to be handed over, are to be reported immediately to the contracting agency.

Article 14--Controlling Duties

Section 1--Jointly with its contractors, the investment contracting agency is to organize a constant control over the fulfillment of the contract. The same duty applies to the contracting agencies in the remaining cooperation chain.

Section 2--The contractors are obligated to inform the contracting agency of the material status of completion, to participate in the control deliberations of contracting agencies, to present the causes for interruptions in the fulfillment of the plan, to submit proposals for future guarantees for a systematic implementation of the investment and to carry out jointly established measures.

Section 3--The partners can enter into agreements on the implementation of joint quality inspection during the construction and assembly process. Quality inspections are to be agreed upon when segments of the construction and assembly production are exempt from inspections by the continuing investment implementation.

Section 4--When violations of the quality requirements are discovered during the investment implementation, the contracting agency can demand the elimination of these defects before accepting the service.

Article 15--Contract Modifications

Whenever the basic decision is to be newly formulated in accordance with the legal regulations, contract modifications may be agreed upon only on the

basis of the new decision. In other instances, contract modifications that deviate from the agreements contained in the basic decision, require the approval of the manager who made the basic decision.

Article 16—Acceptance

Section 1--The contracting agency is to accept the investment service if it has been carried out in accordance with the contractual agreement and if there are no defects or imperfections which could lead to limitations to the projected usability stated in the contract. The contractor's request for acceptance presupposes proof of usability, assuming that the requirements for health, work and fire protection and environmental protection have been met and the required approval measures have been followed, in accordance with the legal regulations.

Section 2--The contracting agency is also obliged to accept the service when the contractually agreed-upon usability--in accordance with the basic decision--is only attained after start-up operations. In this instance, the contracting agency is entitled to request additional proof of the contractually agreed-upon usability.

Section 3--Unless the legal regulations stipulate otherwise, the acceptance is to take place also when proof of usability cannot be ascertained because of circumstances that were caused by the contracting agency or occurred at that location. The contractor's obligation to provide later proof of usability is not affected by these circumstances.

Section 4--The partners are to agree that independently usable project parts or objects will be accepted.

Section 5--If for economic reasons the use of the investment service is required before acceptance, it may only take place after the conclusion of a usability contract. If the contracting agency used the investment service without concluding a usability contract, the danger of an accidental failure or an accidental deterioration is to be assumed by the contracting agency.

Article 17--Warranty

Section 1--The warranty to be granted by the contractor also extends to the binding offer extended by him or to other documents prepared by him.

Section 2--The warranty requirement does not apply when the deficiency is a result of the documentation submitted by the contracting agency or some other cooperation activity. In these instances, the contractor is to remove the reported defects at the contracting agency on terms to be agreed upon.

Section 3--The requirement for later improvements does not apply when the elimination of the defects involves economically unfeasible expenditures and when the contracting agency can be expected to use the goods or services. In this instance, a reduction is to be granted in accordance with the extent of the defect.

Section 4--The period for improvements or replacement services is 2 weeks, beginning with the date of notification of the defect, as long as no other agreements have been made.

Article 18--Legal Warranty Period

Section 1--As long as legal regulations or ordinances by the appropriate state organs do not stipulate otherwise, the warranty period for equipment is 1 year, for construction services 2 years. The partners can agree on a longer warranty period.

Section 2--The warranty period begins with the acceptance of services by the respective contracting agency. The earliest expiration date for all investment services occurs at the end of the warranty period to which the investment contracting agency is entitled. To guarantee a uniform warranty period for the investment, agreements are to be made on an appropriate extension of the warranty period for services that contractually are directly tied to the investment contracting agency and which are accepted before the usability of the investment has been established. If--in accordance with article 16, section 2--the contractually agreed-upon usability can only be attained after a specified period of use, the warranty period expires 3 months following the attainment of full usability in cases where the expiration date would have occurred earlier.

Part 4--Economic Contracts on the Acceptance of Tasks of Investment Contracting Agencies by Major Contracting Agencies

Article 19--Contract Conclusion

Section 1--The major contracting agency for the complex residential construction is to conclude contracts on accepting tasks of investment contracting agencies for buildings and housing facilities for social purposes within the jurisdiction of local state organs.

Section 2--The requirement of contract conclusions for other major contracting agencies--formed in acc[illegible]with the legal regulations--depends on the tasks that were assigned to [illegible]ajor contracting agencies when they were formed.

Article 20--Basic Principle

Section 1--The major contracting agency is obligated by the contract on accepting tasks of investment contracting agencies to perform the tasks of the investment contracting agency--preparing and implementing investments--in its own name but at the expense of the investment contracting agency, and it is to transfer to the investment contracting agency a useful investment on time.

Section 2--The investment contracting agency is obligated to submit to the major contracting agency the confirmed objectives, to make the basic decision or to ask the appropriate organs to do so, to cooperate in the prescribed manner, to make available financial means, to accept the usable investment and to pay the agreed-upon compensation.

Section 3--As a matter of principle, the partners are to agree that the acceptance of the investment by the major contracting agency and its assumption by the investment contracting agency take place at the same time.

Article 21--Additional Duties of the Major Contracting Agency

Section 1--The major contracting agency is charged with the coordination of the different investments in its realm of responsibilities, including traffic and supply functions.

Section 2--The major contracting agency is obligated to submit to the investment contracting agency at the proper time the agreed-upon preparation documents for the basic decision, including necessary approvals, comments and opinions.

Section 3--The major contracting agency is to carry out the control duties in accordance with article 14. The manner and extent of cooperation by the investment contracting agency is to be agreed upon.

Section 4--The major contracting agency is to account to the investment contracting agency for carrying out the tasks. It is to grant access to the investment contracting agency to appropriate documents indicating its compliance with the tasks.

Article 22--Processing Claims

Section 1--The major contracting agency is required to relinquish to the investment contracting agency the results obtained during the process of carrying out the tasks of the investment contracting agency. It is entitled to deduct from the given amount for any damages that transpired while fulfilling the tasks of the investment contracting agency, unless it itself was responsible for the damage.

Section 3--Following the transfer of the investment, the investment contracting agency is entitled to make any claims in its own name, even if they arose during the fulfillment of the tasks by the major contracting agency.

Part 5--Economic Contracts on the Maintenance of Capital Goods

Article 23--Basic Principle

Section 1--On the basis of state plan decisions, the maintenance agreement obligates the contractor to carry out services on buildings, equipment and other capital goods to effect the repair or the improvement of the usability as well as the prolongation of their use. The contractor is obligated to cooperate in the stipulated manner to accept the services and to pay the price.

Section 2--For general repairs and other restoration services, which are to be prepared and implemented like investments, the regulations of part 5 of this decree apply as long as they are not regulated by provisions for contracts on investments.

Article 24--Format of Contract Content

Section 1--The partners are to guarantee through appropriate agreements that repairs will be carried out systematically and with utmost efficiency.

Section 2--The contract is to contain special agreements on

1. the type and extent of repair services,

2. the use of regenerated construction materials and parts as well as the short-term supply of replacement materials,

3. the terms for supplies, construction permits and dates of completion,

4. the documents to be made available by the contracting agency,

5. applicable procedures for quality control and acceptance.

Section 3--The contracting agency is obligated to transport to the contractor the object in need of repair or to grant a building permit in accordance with the specific service required. The granting of building permits is regulated in article 13, section 2.

Article 25--Offer of Services

Section 1--At the request of the contracting agency, the contractor is to make an offer of services which is to contain, above all, a list of services

and a cost estimate. The partners can agree to limit the offer to the cost estimate. If the offer of services is requested before the conclusion of the repair contract, a separate contract is to be concluded on the offer of services.

Section 2--The contracting agency is to provide compensation for the preparation of the offer of services or the cost estimate even if the repairs are not to be carried out.

Article 26--Extent of Services

Section 1--If the extent of required services cannot be determined by the data of the contract conclusion, the partners are to make agreements on the appropriate measures necessary to ascertain the extent of services. With respect to the compensation for services connected with these agreements, article 25, section 2 applies.

Section 2--If, while making the repairs, the contractor discovers that additional work is necessary, which will add more than 10 percent to the cost estimate, he is required to secure the approval of the contracting agency. If the contractor fails to do so, the contracting agency is not obligated to pay the amount which exceeds the cost estimate. The partners can make other arrangements.

Section 3--If the additional services are necessary to prevent these conditions from endangering plant, work and traffic safety and if the contracting agency refuses to give its approval for carrying out this work, the contractor is to point out in his inspection report or in his submitted protocol the defects or possible effects. In a case of serious danger, the contractor is to interrupt the repair process and notify the appropriate organs immediately.

Section 4--The contractor is obligated to hand over any documentation necessary for performing the service. Article 11, section 2 applies accordingly.

Section 5--If a variety of repair services can only be carried out conjuntively, the contract for the complete repair of the object is to be concluded by the contractor whose range of tasks includes the most important part of the repair services.

Article 27--Legal Warranty Period

Unless legal regulations or stipulations by the appropriate state organs rule otherwise, the warranty period for repair services on equipment is 1 year, on buildings it is 2 years.

Article 28--Special Considerations for the Repair and Modernization of Apartments and Apartment Buildings

Section 1--With respect to repairs and the modernization of apartments and apartment buildings, the partners are to guarantee that the preparation of construction timetables is done under consideration of tenant interests and that appropriate agreements are made on providing construction permits. When the buildings are occupied, the contractor is obligated to specify in the timetable the time needed for repair and modernization services separately by rooms and to indicate the days required.

Section 2--The partners are to make agreements on the acceptance of services of specific product lines or professional services, as long as these services are beneficial to the tenant or the contracting agency.

Part 6--Responsibility

Article 29

Section 1--Considering the specific conditions of the investment, the type of service and damages that can generally be expected in cases of contract violations, the partners can agree on the amount of the contract penalty and include it in the contract if the terms differ from the provisions contained in the legal regulations.

Section 2--If the partners agreed on providing investment services by using scientific-technical findings for which adequate experience is not yet available, agreements differing from the legal regulations can be made on the legal consequences following neglect of duties. It does not apply when the risk resulting from the application of such scientific-technical findings is to be considered for arriving at the price.

Section 3--The contracting agency is obligated to pay a contract penalty when the construction permit is not granted or the work process is interrupted, when the object in need of repair is not delivered on time, when work documents are not transferred on time and when agreements on the content or the amount of work documents are violated, and it must make amends for damages that may have arisen. Unless the contractor reports immediately the lack of the construction permit or the interruption in the work process or a violation of the agreements on the content or amount of work documents, the contract penalty can only be demanded as of the time of the report.

Section 4--The contracting agency is obligated to pay a contract penalty in cases of illegal use of the service before the acceptance and, in addition, amends must be made for any damages that may have arisen.

Part 7--Final Regulations

Article 30

This implementing decree will go into effect on 1 July 1982. It will apply to all economic contracts that are to be fulfilled after they go into effect.

8991
CSO: 2300/279B

IMPLEMENTING DECREE ON EXPORT, IMPORT CONTRACTS

Explanation of Decree

East Berlin WIRTSCHAFTSRECHT in German Vol 13 No 2, Apr-Jun 82 pp 110-113

[Article by Marianne Walther, justice, Central Contract Court and deputy chief, industry department of contract court: "Economic Contracts on Export and Import--On the Third Implementing Decree (DVO) to the Contract Law." A translation of the contract law is published in JPRS 80875, 21 May 82 No 2272 of this series, pp 24-73. A translation of the implementing decree discussed below follows this article]

[Text] The further development of legal regulations in import-export trade is aimed particularly at more strongly activating the partners in economic contracts through export and import, in assuming a joint responsibility for an effective foreign trade activity in accordance with economic requirements. The purpose of the regulations thus is to induce the export enterprises and the foreign trade enterprises (AHB's) to make export products available that bring in good foreign exchange and conform with international requirements, ensure their sales and to resolutely abide by contracts concluded. The import enterprises and ABH's are directed to ensure supplying the economy and the population according to plan while making the most economical use of imports.

Through this third DVO to the contract law, furthermore, the combines' further development was to be taken account of, in the course of which a number of combines, for enhancing the quality and effectiveness of foreign trade, were given AHB's as economically and legally independent combine enterprises.

Furthermore, by adopting regulations basic to cooperation law, via the export and import of installations, one has sought a higher degree of complexity in regulating cooperation relations to ensure export and import. In revising the rules in effect thus far, moreover, a justified demand by the partners involved in foreign trade was complied with for simplifying the system of sanctions. A number of changes respond to that concern, which will be commented on in particular.

General Provisions

For determining the range of application of the third DVO to the contract law, one had to proceed, in particular, from the stage of combine development achieved in the process of improving their management and planning and establish conformity

with the legal regulations issued in this field. In view of the authority granted a general director of a combine to centralize certain tasks of the combine,[1] the export and import enterprises had to be defined as economic units appearing as partners of the AHB in export and import. In connection with Contract Law Article 2 section 1, cooperation relations between state-owned combines and AHB's thus fall within the effective range of the third DVO to the Contract Law.

Article 4 of the third DVO introduces a new formal regulation for export-import contracts. This takes care of the demand justly raised in the discussion determined by the importance of such contracts and an unequivocal evidence needed for the actual content of the contract.

Proceeding from the general rules on cooperation relations between combine enterprises in Article 21 of the Contract Law, Article 8 of the third DVO determines the particulars in export-import relations between an AHB that belongs to a combine and a different combine enterprise.

Export-import rules deviating from the general rules on internal combine cooperation relations are motivated by the special place the AHB has within the combine, because an AHB that belongs to a combine is accountable both to the general director of the combine and the minister for foreign trade. This twofold accountability requires that both management areas can assume their responsibility on equal terms within unified, complex foreign trade management.

In regulating internal combine export-import relations one had to consider that mandatory provisions must also apply to the cooperation relations between export enterprises and the AHB's for the sake of ensuring the requisite uniform management, planning, organization and controls in foreign trade. Export enterprises and the AHB's, e.g., are obligated to conclude export-import contracts. Establishing and developing cooperation relations in any way but through contracts thus is excluded for the foreign trade sector.

Within these arrangements it is up to the combine to organize optimum cooperation among the partners as it conforms to specific conditions to solve the foreign trade tasks, according to plan, with high efficiency. That applies, e.g., to the development of rules of conduct as proposed by the third DVO for coordination contracts, unless the signing of coordination contracts is governed by other mandatory provisions.[2]

Cooperation regulations may also set down time frames for bids and the partners' rights and duties in jointly negotiating the signing and fulfilment of contracts with foreign partners, in readying export deliveries, processing complaints and safeguarding claims. Cooperation regulations must however not issue any rules that differ from the legal export-import regulations.[3] Authorized central state organs may make different arrangements.[4]

A specific aspect of internal combine import-export relations with regard to rulings on litigations was settled by Article 8 section 2 of the third DVO. It envisages for ruling on litigations over the fulfilment of economic contracts the competency of the State Contract Court when agreement cannot be reached within the combine.

Although, in accordance with procedural regulations of the State Contract Court decree, an attempt to settle litigations under their own responsibility must be made evident in any given case, when the application is made to start arbitration proceedings,[5] it was considered necessary to stipulate explicitly the attempted settlement in the combine as prerequisite to such an application. That was meant to underscore that the extensive opportunities existing within the combine for out-of-court settlements of suits should be fully exhausted. With regard to that it must yet be considered that a decision by a general director of a combine that opposes reasonable objections by one of the partners does not count as a sttlement under own responsibility in terms of Article 8 section 2.

The special rule on the competency of the State Contract Court in litigations on contract fulfilment also implies that the State Contract Court may start proceedings in such cases even without any application. This does not infringe the authority of the general director to settle suits in organizing cooperation relations as to Article 21 section 3 in the Combine Decree.

Types of Contracts

Surveys carried out in preparation of the third DVO found that the types of contracts based on the regulations in effect thus far have stood up well. Thus the export commission contract and the export and import contract were adopted in the third DVA. Thus they will continue to be the binding contract types and, irrespective of AHB subordination, ensure the uniform structure of import-export relations.

The third DVO has refrained from issuing rules on retail trade contracts. The specifics in that field justify special legal regulations.[6]

On the Coordination Contract

Pursuant to the streamlined model for the coordination contract as settled by the Contract Law (Article 34), the third DVO also formulated a contract in preparation of subsequent export-import relation performance[7] as a coordination contract.

The duty to sign coordination contracts on preparing the export (Article 9 section 3) or the import (Article 13) of installations was adopted by the third DVO in conformity with authoritative, binding regulations. Despite reservations expressed in the course of the discussion to regulating an obligation for signing a coordination contract on the export of installations, that obligation could not be avoided because the export commission contract only takes effect after a general supplier's written agreement with the export contract prepared for signing (Article 15 section 2). An export commission contract therefore is unsuitable for any particular orchestration of the partners' rights and duties in preparation for future performance relations in the export of installations. That is why this must be handled by a coordination contract. The duty to sign coordination contracts on preparing an export of installations between general suppliers and their chief or other customers[8] is set down in Article 34 section 1 of the Contract Law.

On the Export Commission Contract

Export enterprises with integrated business objectives must sign export commission contracts with the competent AHB. This applies, as to Article 8 section 1 of the third DVO, also to export enterprises and AHB's belonging to one and the same combine. The export commission, which has stood particularly well as a legal instrument that imposes on the export enterprise a higher responsibility for the development and production of marketable products, is being considered the appropriate form even under the conditions of a more extensive inclusion of foreign trade tasks in the combine's management activity for shaping export-import relations.

As to the rules on the further substantiation of the export commission contract, some changes were made that are meant to lead to more responsible conduct of the partners both with regard to the conditions of special export business and to economic requirements. There will then no longer be a legally regulated time frame for making bids in the future. The partners have to agree on such time frames among themselves (Article 16 section 1) with a view, among other things, to sales market requirements. The desire expressed by some export enterprises to set down time frames for delivery arrangements and releases has not been honored. Here also one orients to contractual agreements (Article 22 section 1) in order to be able to take better account of the specific conditions for the export of products and of the experiences with regard to the partners' mode of operation. Incidentally, the partners may enforce the orchestration of such contractual conditions through assistance from the State Contract Court. According to Article 26 section 1, last clause, in the third DVO, the partners may also agree on contractual fines for violating those obligations.

Regulating performance time frames was supplemented on the basis of extra-economic requirements inasmuch as the ABH's and the export enterprises have to agree on performance deadlines in the export commission contracts which, as it were, are intermediate dealines for the performance time frames agreed on in the export contract, with special sanctions envisaged for their violation (Article 18 section 2 and Article 26 section 2 of the third DVO). This regulation is motivated by the desire to achieve the necessary export continuity. The monthly or quarterly delivery deadlines set down in the export contracts as a rule make it possible for the export enterprises to predeliver export products at the end of a month or quarter without infringing their obligation to ship by schedule in fulfilment of contracts. In the economic interest, that should be opposed.[9] This rule, by the way, also applies to export contracts.

As in consequence of the strong price and rate fluctuations on the foreign markets the minimum foreign exchange rates no longer exercise their originally intended function of directing AHB behavior in price negotiations with foreign partners, the AHB's and the export enterprises are being oriented to more flexibly handling various forms for setting prices (Article 19 section 1). Joint negotiations (Article 6) offer the necessary possibilities for it. For agreements on setting foreign exchange rates, the partners depend on the concepts and limits for prices as issued by the Ministry for Foreign Trade.

Article 18 section 1 and Article 19 section 2 of the third DVO contain a rule that entitles the AHB to conclude an export contract even when delivery schedules and prices could not be agreed on, and to settle such accords itself to a certain degree. Some combines to which an AHB is attached have criticized this. The point was made that an export contract, as far as it goes, could be concluded only on the basis of a decision made by the general director of the combine. When such an argument is raised, it is being ignored, however, that it is up to the general director of a combine to make sure such an accord comes about at a good time. As far as the general director's authorizations are concerned, that would also be possible through appropriate management decisions. The combine's own decision-making thus makes it possible to prevent the alternative of Article 18 section 1 and Article 19 section 2 from taking effect.

On the Import Contract

For the import contract, the delivery contract has been preserved as a suitable model. Departing from the rules thus far,[10] one abstains from detailed specifications on quality stipulations and on determining the useability of the product that is to be imported. Here one focuses then on a kind of cooperation between the economic units that conforms with the requirements of their own responsibility for special imports. In any event, partners have to come to quality agreements that would ensure the useability of the products in the GDR. That implies the liability to pay heed to all authorized instructions. If the conditions thus demanded are not feasible in an import, the import enterprise, as to Article 33 section 2 of the third DVO, has to decide whether it nevertheless wishes to get the import. As to the demands for health protection and labor safety and fire insurance, Article 33 section 1 explicitly points to the agreements required by legal provisions.[11] If the import enterprise decides in favor of getting the import, that presupposes a responsible examination of the products' useability, including coordination with the final user or the accounting organ and the competent supervisory organs. In the same way, decisions have to be made about any possible resupply or replacements before one may accept the useability clause for the GDR.

It was also possible to do without the old and detailed stipulations, as of Article 45 sections 4 and 5 of the fourth DVO, on the applicability of CEMA standards in view of the new rules on introducing CEMA standards.[12] This rule provides for the introduction of CEMA standards in two stages. After CEMA standards have come into effect as mandatory for application in the economic and scientific-technical cooperation with the GDR and the other CEMA states, the GDR issuance according to CEMA standards as mandatory for application within the GDR economy goes into effect. So, for the application of GDR issuances of CEMA standards the same provisions apply as for the applying GDR and specialized standards.

Material Accountability

To simplify the sanction system, export sanctions were included in the Contract Law's penalty system (Article 26 section 3). This does away with the previous liability the export enterprise had of paying part of the fines to the state budget.

Without abandoning the time-tested principle to punish export infringements without regard to the foreign partner's own accounting, this rule ensures the proper fulfilment of export contracts more comprehensively in that now the violation of all export contract obligations becomes subject to sanctions while export enterprises, as to Article 62 section 1 of the old fourth DVO, have to pay fines only when export contracts were improperly met in terms of deadlines or qualities. The just demand for simplifying the sanction system is also served by the modification with regard to the legal consequences in material accountability when export contracts were violated. Through appropriate application of Article 26 of the third DVO, fines and damages are to be paid in accordance with the provisions in the Contract Law for export contract infringements. This does away with differentiating claims of the AHB to fines and damages owing to the provisions on international delivery conditions the GDR recognizes and on stipluations in treaties under international law.

Accountability arrangements have been made altogether more understandable in the import contract. First there is the proposition that to the accountability of the AHB and the import enterprise in case of their having violated their obligations there apply the principles of the Contract Law and the provisions of the fifth DVO. When a foreign partner violates his obligation, AHB accountability, as to Article 42 of the third DVO, in principle depends on whether and to what extent claims against the foreign partner exist according to the import contract and the law that applies to it. That applies to all claims on an inadequate fulfilment or non-fulfilment of an import contract, for the facts of the case and the amount of the contract penalty and damages as well as for warranty claims,[13] the refusal to accept shipments or to pay, the interest computation and so forth. As far as this goes, the rules as to Articles 46 and 47 of the third DVO merely reiterate the principle set down in Article 42. This still had to be included in the third DVO because with respect to warranty claims, different arrangements had to be held feasible,[14] e.g. when consumer goods are imported, and in regard to cancellations, the dealine for making them with respect to the foreign partner had to be rendered specific.

An independent right by the import enterprise to refuse the acceptance of goods[15] that is not provided in the import contract and the law applicable to such a contract was no longer included in the third DVO because neither CEMA's general delivery terms as of 1968/1975, in the form of 1976,[16] nor the 5 February 1976 law on international economic contracts (GIW)[17] provide for a refusal to accept shipment as a sanction against shipments in improper quality and contractual agreements of that sort are, in principle, not in use internationally. Thus, when explaining why it refused acceptance in terms of the old fourth DVO, the AHB could press no such claim against a foreign partner.

Supplementing Article 42, the third DVO's Article 43 regulates an original claim by an import enterprise to a minimum fine[18] when a foreign partner has caused delay, non-fulfilment or a performance improper as to quality. This, on the one hand, is meant to induce the AHB to negotiate optimum safety conditions for contract fulfilment with a foreign partner and, on the other hand, make it possible for the import enterprise to be reimbursed for any damage to some extent.

Article 43 of the third DVO always applies if international delivery conditions or stipulations in treaties under international law, recognized by the GDR, have no regulations on contract penalties, there are no such delivery conditions or international law treaties, or no contract penalty, or only one below the minimum rate, could be enforced through the import contract and the law applicable to it.

To settling a liability in a violation of obligations caused by the foreign partner and affecting the AHB, in terms of a mandatory import contract, there applies the accountability regulation for relations in the cooperation chain. For relations between final users and their partners and the extended cooperation chain, this regulation settles an exclusion or a limited accountability as to Article 83 section 3 of the Contract Law.

Accountability for Violating State Discipline

Part VI of the third DVO, supplementing Article 109 of the Contract Law, rules on facts of the case that might incur payments for economic sanctions for the violation of state discipline in export-import preparation and implementation. What is particular in the regulation as of Article 48 of the third DVO is that it deals with the grossest violation of economic interests in concluding and fulfilling export and import contracts, i.e. the conduct of the economic units in their relations with foreign partners. The facts of the case must of course be understood completely. Without providing a complete list of all possible infringements as in Articles 63 and 64 in the old fourth DVO, this includes in particular such irregularities as detriments to sales due to qualitative deficiencies or violations of obligations in organizing and conducting customer service and so forth.

Settling violations of commitments incurring economic fines in import (Article 49 of the third DVO) is determined, to a special degree, by the specific conditions to be taken into account when a decision to import is made.

The maximum of economic sanctions for the violation of state discipline in export-import preparation and implementation, by the new version of the Contract Law is adjusted to M 500,000.[19] It takes account of the greater responsibility incurred by all partners in foreign trade.

FOOTNOTES

1. Cf. Article 7 section 2 of the 8 November 1979 decree on the state-owned combines, combine enterprises and state-owned enterprises (GBL, Part I No 38 p 355), hencefort referred to as Combine Decree.

2. Cf. Article 9 section 3 and Article 13, third DVO.

3. Cf. also Article 23 section 3, Combine Decree.

4. These are the ministry for foreign trade and other ministries or central state organs with combines under them to which AHB's are attached.

5. Article 19, State Contract Court Decree.

6. Cf. first implementing regulation of 17 November 1978 on the decree on the management and conduct of foreign trade--independent commercial activity-- (GBL, Part I No 41 p 443).

7. Cf. Articles 9 and 10 of the fourth DVO (old).

8. Cf. "Basic Observation on Organizing and Fulfilling Economic Contracts in Installation Export," No 1, 1979 (placed directly under the ministries); cf. also M. Walther, "On Some Legal Matters in Installation Export," WIRTSCHAFTS-RECHT, No 3, 1979, p 158.

9. Cf. also M. Walther, "Affecting the Needed Export Continuity," WIRTSCHAFTSRECHT, No 3, 1980, p 150.

10. Cf. Article 45 of the fourth DVO (old).

11. Cf. Article 8 of the third implementing regulation of 24 January 1980 on the labor safety decree--trade mark quality-- (GBL, Part I No 6 p 45).

12. Cf. first implementing regulation of 30 April 1978 on the decree on CEMA standard (GBL, Part I No 19 p 233).

13. The fourth DVO (old) has often been criticized, cf. e.g., M. Kemper and D. Maskow, "Aussenwirtschaftsrecht der DDR" (GDR Foreign Trade Law), Berlin, 1975, p 314.

14. Cf. Article 150, Civil Code, together with instructions from the minister for foreign trade and the minister for trade and supply.

15. Cf. Article 58 of the fourth DVO (old).

16. Announcement of the CEMA general delivery terms 1968/75 in the form of 1979, of 12 October 1979 (GBL, Part II No 6 p 81).

17. GBL, Part I No 5 p 61.

18. Cf. Article 11 of the fifth DVO

19. Cf. Article 110, Contract Law.

Text of Decree

East Berlin GESETZBLATT DER DEUTSCHEN DEMOKRATISCHEN REPUBLIK in German Part I No 16, 29 Apr 82 pp 333-339

[Official text of "Third Implementing Decree to the Contract Law--Economic Contracts on Export and Import--25 March 1982," signed by Willi Stoph, Chairman, GDR Council of Ministers]

[Text] Pursuant to Article 117 section 1 of the Contract Law of 25 March 1982 (GBL, Part I No 14 p 293), the following is decreed:

I. General Provisions

Article 1 -- Scope

(1) This implementing decree regulates the concluding and fulfilling of economic contracts between the foreign trade enterprises and the economic units that act in the delivery of products, the setting up of installations and other export and import transactions as partners of the foreign trade enterprises (export and import enterprises). Economic units charged with foreign trade functions are considered foreign trade enterprises in terms of this implementing decree.

(2) This implementing decree, subject to subsequent or other legal regulations, also applies to the relations between an export enterprise and its ancillary suppliers and to the further cooperation chain and, in import, to the cooperation chain down to the final buyer.

(3) Supplementing this implementing decree, provisions in force for any given kind of performance apply to export and import performances.

Article 2 -- The Tasks of Economic Contracts

(1) The foreign trade enterprises and the export-import enterprises have to conclude and fulfil economic contracts in such a way that foreign trade preparation and implementation are ensured according to plan and a growing contribution is made to improving economic efficiency.

(2) The economic units have to use the economic contracts via export to make available marketable products, renew export assortments in line with international requirements and with increasing lucrativeness, ensure the flexibility of export production, improve the effectiveness of market research, and consistently ensure customer service and spare part supplies.

(3) Economic contracts on imports have to be used to secure supplying the economy and the population according to plan, while making the thriftiest use of imported goods.

Article 3 -- Bases for Economic Contracts

(1) Export-import enterprises and foreign trade enterprises have to base their economic contracts on state planning decisions. Legal regulations may settle further preconditions for concluding contracts.

(2) Contracts have to be based on the stipulations agreed on in export-import negotiations, which must be based on state planning decisions.

Article 4 -- Form of Economic Contracts

Export-import contracts must be drawn up in writing or some other embodied form.

Article 5 -- Modifications and Cancellations of Economic Contracts

(1) Unless legal regulations provide differently, export commission contracts and import and export contracts may only be modified or cancelled if not ruled out by international law treaties or international economic contracts.

(2) Foreign trade enterprises are under the obligation to seek modifications or cancellations of a contract (export or import contract) concluded with a foreign partner if economic interests demand it.

Article 6 -- Joint Contract Negotiations

(1) The signing and fulfilling of export and import contracts must be jointly negotiated if that is demanded by the foreign trade enterprise or the export or import enterprise.

(2) Foreign trade enterprises and export and import enterprises are under the obligation to engage jointly in negotiations on the signing and fulfilling of export and import contracts dealing with installations. Important partners in the cooperation chain have to be drawn into the preparations for the joint negotiations. They are obligated to take part.

Article 7 -- Enforcing Claims

The foreign trade enterprise is under the obligation to exercise and enforce claims against foreign partners and turn down unjustified claims. The export or import enterprise and the partners in the extended cooperation chain are entitled, and on the request from the foreign trade enterprise are obligated, to take part in preparing and conducting out-of-court, arbitration court or court settlements.

Article 8 -- Regulating Cooperation Relations Among Combine Enterprises

(1) Cooperation relations between a foreign trade enterprise that is part of a combine and other combine enterprises are organized by economic contracts. In their cooperation transactions no arrangements may be made that deviate from legal regulations on export and import, unless different arrangements were made between the competent central state organs.

(2) Foreign trade enterprises attached to a combine and export and import enterprises have the right to apply for proceedings before the State Contract Court in litigation on the fulfillment of economic contracts, as to Article 1, unless they can settle matters under their own authority.

II. Coordination Contracts

Article 9 -- Coordination Contracts on Export

(1) Coordination contracts have to make arrangements especially about
1. establishing the developmental trends of the products' qualities, costs and prices abroad,
2. market research measures including promotion and developing sales outlets,

3. innovative and further development of export products by the export enterprises and the foreign trade enterprise obligation to take part in this,
4. storage maintenance,
5. ensuring customer service and spare part distribution,
6. trade mark protection measures and measures to prevent legal shortcomings, and
7. ensuring reciprocal information and documentation requirements.

(2) The arrangements as to section 1 can also be made in an export commission contract, unless an obligation exists to sign a coordination contract.

(3) In preparing export of installations, the foreign trade enterprises and the export enterprises have to conclude coordination contracts.

Article 10 -- Promotion

The foreign trade enterprise is responsible for promotion abroad. An export enterprise is under the obligation to make available to the foreign trade enterprise, free of charge, at agreed amounts and by an agreed deadline, promotion material and catalogues in the internationally current commercial languages, in conformity with market requirements, and samples and models for fairs and exhibitions, for display and testing abroad.

Article 11 -- Storage

(1) For storage abroad, the foreign trade enterprise has to organize storage facilities. The costs for it are paid by the export enterprise.

(2) When installations are exported, the general supplier has to organize storage facilities in situ, unless other arrangements were negotiated in the export contract.

Article 12 -- Customer Service and Spare Part Distribution

(1) The foreign trade enterprise is responsible for customer service abroad. The export enterprise is under the obligation to create the technical and personnel prerequisites for the customer service. It must make available to the foreign trade enterprise, free of charge, the necessary basic assets and working tools. The export enterprise has to ensure an adequate supply in spare and replacement parts on schedule.

(2) If about the handling of customer service, including the ways and means for handling warranty claims, contracts are to be signed with foreign partners, the intended content of such contracts has to be agreed on between the foreign trade enterprise and the export enterprise. These agreements then determine the form of the contracts in the cooperation chain.

Article 13 -- Coordination Contracts in the Import of Installations

(1) In preparing an import of installations, the foreign trade enterprise and the import enterprise have to sign coordination contracts. Unless an import enterprise has itself given the order, the coordination contract must be signed by the one who gave the order, the foreign trade enterprise and the import enterprise.

(2) In coordination contracts, arrangements have to be made in particular on
1. partnership in requirement elaboration,
2. the phases in preparation for the imports of installations,
3. the documentation to be handed over to the foreign trade enterprise for bids,
4. the offers the foreign trade enterprise may demand of the foreign partner, and
5. the documents to be handed over by the contract partners to the foreign trade enterprise for working out contract offers and negotiation directives.

III. Export Commission Contracts

Principles

Article 14

(1) Cooperation relations between export enterprises working for one and the same enterprise objective and the competent foreign trade enterprise are handled by export commission contracts.

(2) By an export commission contract a foreign trade enterprise assumes the commitment to sell to foreign partners products and other services in its own name on account of the export enterprise at terms agreed upon. It must pay to the export enterprise the price agreed upon in the export contract in accordance with legal regulations. The export enterprise is under the obligation to stand behind the service agreed on in the export contract and pay a marginal sum to the foreign trade enterprise.

(3) The provisions of international delivery conditions and terms, as recognized by the GDR, in treaties under international law are binding on a contract even if not explicitly negotiated.

Article 15

(1) In the export of installations, the general supplier is the sole contract partner of the foreign trade enterprise. The general supplier's contract partner may be the major supplier or other suppliers.

(2) In the export of installations, the export commission contract goes into effect when the general supplier has declared his agreement, in writing, with the export contract as prepared for signing. Any additions have to be negotiated as soon as the contract is signed.

Article 16 -- Bids

(1) If the particulars of the product or the sales market conditions require it, the export enterprise has to submit bids to the foreign trade enterprise. The partners have to agree on the deadlines for submitting bids.

(2) An export enterprise has a claim to be paid for bids only if the foreign partner is obligated to pay for them.

Article 17 -- Quality and Warranty

(1) The partners have to agree on quality in line with the internationally set quality levels or the foreign partner's requirements. The quality agreements binding on the export enterprise are to be made the basis for the cooperation chain.

(2) Unless international delivery conditions or terms in treaties under international law as recognized by the GDR or warrenty conditions exist, agreements have to be negotiated in accordance with warranty conditions generally in effect. On such agreements are the relations in the cooperation chain to be based.

(3) The warranty periods as contained in international delivery conditions or in the terms of treaties under international law, as recognized by the GDR, or those agreed on in accordance with section 2, are legally binding warranty periods for all partners in the cooperation chain.

Article 18 -- Time of Performance

(1) The partners have to agree on the times of performance in accordance with the requirements of the sales markets. If such an agreement has not been brought about, the foreign trade enterprise is entitled to take for its basis in the agreement on the time of performance in the export contract the time frame offered by the export enterprise.

(2) To ensure the necessary export continuity, performance schedules have to be agreed on in the export commission contracts that lie within the performance deadlines as negotiated in the export contract.

Article 19 -- Price

(1) In the export commission contract, the partners, based on ratified price concepts or price limits, have to negotiate the setting of foreign exchange prices.

(2) If no agreement has been brought about concerning the valuta price, the foreign trade enterprise has the right to complete the export contract at the kind of valuta price conforming with comparable products on the sales market. Evidence for such a price has to be furnished the export enterprise by means of price documentation.

Article 20 -- Concluding an Export Contract and Its Terms

(1) The foreign trade enterprise concludes export contracts in conformity with the agreements in the coordination contract and in the export commission contract, and with the bids from the export enterprise. The terms of the export contract, including the applicable legal terms, are binding on the export enterprise. The foreign trade enterprise has the obligation to submit a copy of the export contract to the export enterprises within 2 weeks after it was signed or inform it otherwise in writing about the signing and terms of the export contract.

(2) If a foreign trade enterprise wants to make arrangements that deviate from those as per section 1 or from a bid, in the export contract, agreement must be obtained for it from the export enterprise, unless the possibility of deviating is part of the contract. Agreement or justified rejection must at once be announced by the export enterprise.

(3) An export contract deviating from the arrangements as to section 1 or from a bid is binding on the export enterprise even when it has not agreed to such a deviation, unless the deviation makes the performance of the export enterprise impossible. If it deems the performance impossible, the export enterprise has to reject the export contract at once, the latest within 10 days after gaining cognizance of it.

Article 21 -- Scope of Performance for Main and Other Suppliers in Installation Export

(1) The main and other suppliers are, in particular, under the obligation to provide bids, project planning and other scientific-technical services, to deliver and assemble and take part in testing operations, in performance demonstration and in handing over the installation, as well as to provide services for the training of technicians for operations, technical aid and customer service.

(2) The ways and means and scope of the performance to be accomplished have to be settled among the general supplier and the main and other suppliers pursuant to the terms of the export contract.

(3) If the export contract provides for full assembly, the scope of performance for the main and other suppliers includes the assembly of their own equipment. That also applies to the chief assembly accordingly.

Article 22 -- Shipment

(1) The partners have to agree on authorizing shipment dispositions and releases. A shipment release from a foreign trade enterprise may be cancelled.

(2) An export enterprise has the responsibility to package and ship the product proper as to export specifications. The partners may agree that the foreign trade enterprise makes all the necessary shipping arrangements with the economic units in transport at the expense of the export enterprise.

(3) Upon request by the foreign trade enterprise, the export enterprise is under the obligation to inform the foreign partner by telephone or teletype of having shipped the products within 24 hours after they were sent off. The partners also may make other arrangements.

(4) The export enterprise is under the obligation to indicate that a shipment is ready at least 10 days prior to handing it over to the transport enterprise by informing the foreign trade enterprise and the shipping company concerned, unless other arrangements were made.

Article 23 -- Property Transfer, Aleatory Clause and Place of Performance

(1) Property transfer and risk and the place of performance are determined by the export contract, unless other arrangements were made.

(2) The foreign trade enterprise has to take out mandatory insurance for the export products and assume the rights and obligations provided by the insurance arrangement.

(3) If installation export includes the delivery and assembly of machines and equipment as within the scope of performance by the chief and other suppliers, the place of performance is the site of assembly or any other place so defined by the client, unless other arrangements were made. The place of performance is defined in terms of Article 29, if the supplier only has to supply machines and equipment.

Article 24 -- Currency Billing

The export enterprise makes out the bill (currency bill) to the foreign partner, unless other arrangements were made. The documents agreed on or contained in the export contract have to be attached in appropriate copies to the bill.

Article 25 -- Securing Payment

(1) The foreign trade enterprise has the obligation to examine the foreign partner's solvency before the export contract is signed and ensure payment. It bears the risk for the foreign partner's paying in valuta prices.

(2) If the foreign trade enterprise has asserted the right, as set down in the export contract, to ask that the products be returned, the export enterprise has to take the products back and reimburse the foreign trade enterprise for the amount of payment received from it. Return shipping costs and any other clearing costs are borne by the foreign trade enterprise. It remains bound to sell the products abroad on the basis of the export commission contract.

Article 26 -- Liability

(1) The foreign trade enterprise and the export enterprise bear the blame for a non-fulfilment or improper fulfilment of an export commission contract. They are under the obligation reciprocally to make up for damages incurred through their violating their obligations, pursuant to the legal regulations on material liability. Contractual fines may be agreed on for the violations of certain obligations.

(2) If an export enterprise infringes the scheduled deadlines as to Article 18 section 2, it must pay a contractual fine to the foreign trade enterprise for the default. A contractpenalty paid is to be debited to a default penalty to be paid as to section 3.

(3) If an export enterprise infringes performance obligations in the export contract, it has to pay a contractual fine to the foreign trade enterprise in accordance with Contract Law provisions. An export enterprise is committed to pay

damages to the foreign trade enterprise to the extent that the latter was held liable by the foreign partner in conformity with the terms of the export contract. A contractual penalty already paid is debited to the damage claim.

(4) A foreign trade enterprise is liable to hand over to the export enterprise all that was received in satisfying the claims in the export contract. This does not apply to claims on violations of payment liabilities.

IV. Export Contracts

Article 27 -- Principle

(1) Cooperation relations between export enterprises not working for one and the same enterprise objective and the competent foreign trade enterprise are handled by export contracts.

(2) By an export contract an export enterprise assumes the commitment to hand over the product agreed upon to the transport enterprise or shipping company to deliver it to the foreign partner of the foreign trade enterprise and assign the fund ownership or property right to the foreign trade enterprise. The foreign trade enterprise is obligated to accept the product and pay the industrial price for it. Other performances also can become subject to export contracts.

(3) Export commission contract provisions appropriately apply to export contracts as well, unless other rules are submitted in the following.

Article 28 -- Refusal to Conclude a Contract

(1) A foreign trade enterprise may not refuse concluding a contract because it has not yet signed an export contract.

(2) A foreign trade enterprise is not compelled to to sign an export contract as long as there are no sales chances abroad despite all efforts made in that direction. Export contracts already concluded should in such a case be modified or cancelled.

Article 29 -- Place and Time of Performance

(1) The place of performance is the place where fund ownership or property rights are transferred. That may be in
1. railroad transports, the freightcar dispatch at the GDR border crossing point,
2. motor vehicle and inland waterway transports, the passing of the border crossing point of the GDR,
3. merchant marine transports, the transshipment in a GDR port to recipients of the shipment as authorized by the foreign trade enterprise,
4. air transports, the transshipment in a GDR airport, and
5. postal shipments, a dispatch at the post office.

(2) The performance is carried out at the time referred to under section 1.

Article 30 -- Warranty

(1) The warranty period, unless it begins with the start of operations, begins at the times in accordance with Article 29, in maritime transports, with the date of the bill of lading.

(2) The announcement by the foreign trade enterprise that a warranty case exists has to be made as soon as the foreign partner reports the fault, at the latest, 45 days after the warranty period has expired. The partners also may agree on reduced time frames.

Article 31 -- Shipping Disposition

If the partners have failed to negotiate a time when the shipping disposition has to be announced, the foreign trade enterprise is under the obligation to announce the shipping disposition 2 weeks prior to the scheduled performance or the start of the performance period at the latest.

V. Import Contracts

Article 32 -- Principle

(1) Cooperation relations between import enterprises and the competent foreign trade enterprise are handled by import contracts.

(2) The import contract commits the foreign trade enterprise to hand the product over to the import enterprise and transfer to it the fund ownership or property right. The import enterprise is under the obligation to accept the product and pay for it. Other performances also may be subject to import contracts.

(3) Only one import enterprise is, in principle, the contract partner of the foreign trade enterprise for a given product of the production and performance nomenclature. The central state accounting organ designates that import enterprise, and the competent central state organ does so for deliveries serving public supplies exclusively. If a type of product finds no more than two different kinds of buyers, import contracts have to be signed with both.

Concluding an Import Contract

Article 33

(1) In principle, an import contract calls for an import license. An import contract that deviates from the terms of the import license or the bids of the import enterprise calls for an import enterprise authorization ahead of time. When those deviations concern health protection, labor safety and fire insurance requirements, the import enterprise has to obtain the legally required authorizations.

(2) If the terms of the import license or bid cannot be enforced vis-a-vis the foreign partner, the import enterprise has to decide whether the import should be authorized anyway.

(3) The foreign trade enterprise has to submit a copy of the import contract to the import enterprise within 2 weeks after its having been signed or inform it otherwise in writing about the signing and terms of the import contract.

Article 34

(1) In the import of installations, the buyer or supplier may be an import enterprise. The import license takes effect when the buyer declares his agreement in writing or, if the buyer is not also an import enterprise, when the import enterprise declares its agreement with the import contract prepared for signature.

(2) In the import of installations, the terms of the import contract except for the prices, the payment conditions and legal status, up to including the buyer, remain in effect. The import license is to be updated right after the import contract is concluded by further terms, especially on prices, the payment conditions and the forms and methods in the cooperation between the partners while the import is being transacted.

Article 35 -- Quality

(1) The quality of performance has to be agreed on so that the useability requirements for the GDR are complied with.

(2) The foreign trade enterprise is under the obligation to let the import ascertain, if it so wishes, the quality of the products and the prerequisites for their licensing. Licensing has to be applied for by the import enterprise, unless legal regulations determine otherwise.

(3) Accords on quality in import licenses are to be held basic to the relations in the extended cooperation chain all the way to the end buyer.

Article 36 -- Customer Service and Spare Part Supply

The accounting organ, in concert with the import enterprise and the foreign trade enterprise, has to decide whether spare part supply is to be ensured by means of GDR production or by import. If the spare part supply is to come out of GDR production, the accounting organ appoints an economic unit responsible for spare part supplies in coordination with the combine or next-higher organ. This also applies to customer service arrangements.

Article 37 -- Warranty Period

(1) The warranty period is governed by the provisions for international delivery conditions as recognized by the GDR or stipulations in treaties under international law.

(2) When international delivery conditions as recognized by the GDR or stipulations in treaties under international law do not exist or do not settle the warranty period, the partners must make arrangements about them.

(3) If the warranty period is not determined as to section 1 or not agreed on as to section 2, the fault reporting period as of Article 45 section 3 counts as warranty period.

(4) The warranty period ends with the termination of the warranty period as determined as to section 1 or agreed on as to section 2.

(5) If the start of the warranty period is not determined as to section 1 or agreed on as to section 2, it starts as soon as the performance is made.

(6) This ruling is applied accordingly to the relations in the cooperation chain down to the end buyer.

Article 38 -- Performance Period

(1) Performance periods are in principle set down by months.

(2) The performance period agreed on becomes basic to the relations in the cooperation chain all the way to the end buyer.

Article 39 -- Shipping Disposition

(1) If the place of destination cannot be determined when the contract is signed, the import enterprise is under the obligation to make a shipping disposition 5 weeks prior to the scheduled performance or the performance period, unless other arrangements were made.

(2) If the shipping disposition is not made in time, the foreign trade enterprise has the right to induce the foreign partner to ship to the import enterprise.

Article 40 -- Time and Place of Performance

(1) The place of performance is the place where fund ownership or property rights are transferred. That may be in
1. railroad transports, the freightcar dispatch at the GDR border crossing point,
2. motor vehicle and inland waterway transports, the passing of the border crossing point of the GDR,
3. merchant marine transports, the transshipment in a GDR port (loading on freightcars or vehicles, port storage at import enterprise depots, port dock storage as directed by the import enterprise),
4. air transports, the transshipment in a GDR airport, and
5. postal shipment, by postal delivery.

(2) The performance is carried out at the time referred to under section 1.

(3) The foreign trade enterprise is obligated to ship products within the GDR.

(4) Unless legal regulations determine otherwise, the import enterprise assumes all costs beginning at the points as specified under section 1. In railroad transports, freights from the national border of the GDR (tariff rates) are borne by the import enterprise.

Article 41 -- Notifying the Import Enterprise

The foreign trade enterprise is under the obligation to inform in good time the import enterprise and, if necessary, the shipping company of the expected arrival date of the shipment at its place of performance.

Liability

Article 42

(1) If a foreign partner involved in the signing or fulfilment of a contract has violated an obligation, the liability of the foreign trade enterprise depends on whether and to what extent, according to the import contract and the law applicable to it, claims exist against foreign partners, unless no other rulings are subsequently provided. That also applies to the relations in the cooperation chain all the way to the end buyer.

(2) If claims against foreign partners cannot be enforced and the fault for it lies with the import enterprise, claims as to section 1 are not authorized.

Article 43

In case of default, non-fulfilment or improper quality performance caused by the foreign partner, the foreign trade enterprise has to pay at least the contractual fines as arranged for such cases. To the extent that international delivery conditions recognized by the GDR or stipulations in treaties under international law contain rules about contractual fines, they are used exclusively. This also applies to the relations in the cooperation chain down to the end recipient.

Article 44

In the import of installations, and in the case that a foreign partner has committed a violation of obligations, the import enterprise is entitled to claims against the foreign partner to the extent that they can be enforced. Measures taken to enforce them have to be documented by the foreign trade enterprise. This also applies to the relations in the cooperation chain all the way to the buyer.

Article 45 -- Reporting Faults

(1) Faults must be reported by ways and means as required for enforcing claims against the foreign partner.

(2) When in such a fault report the existence of jeopardy is to be proven to the foreign partner, the import enterprise has to provide the evidence for it.

(3) Faults must be reported by the import enterprise no later than 1 month before the expiration data, which the foreign trade enterprise must abide by in dealing with the foreign partner.

(4) If the fault is not reported within the time frame as of section 3 yet still within the time frame agreed on in the import contract, and if the claims against the foreign partner still can be enforced, the foreign trade enterprise must make good the warranty vis-a-vis the import enterprise.

(5) These rules are applied accordingly to the relations in the cooperation chain down to the end recipient.

Article 46 -- Warranty Claims

If no agreement was made on the type of warranty claims, the import enterprise may demand warranty services as enforceable against the foreign partner by the import contract and the law that applies to it. This also applies to the relations in the cooperation chain down to the final recipient accordingly.

Article 47 -- Cancellation

(1) The import contract terms and the provisions of the law that applies to it determine contract cancellation.

(2) An import enterprise can cancel only if the foreign trade enterprise has meanwhile, and in good time, explained it to the foreign partner.

(3) This rule is applied accordingly to the relations in the cooperation chain all the way to the final consumer.

VI. -- Economic Sanctions

Article 48

Economic units that are grossly violating economic interests in concluding and fulfilling export contracts, may be compelled to pay economic fines.

Article 49

Economic and state organs working on the basis of economic cost accounting may be compelled to pay economic fines if they apply for, confirm, authorize, plan or carry out unjustified imports.

VII -- Final Provisions

Article 50

This implementing decree goes into effect on 1 July 1982. It applies to all economic contracts to be fulfilled after its being in force.

5885
CSO: 2300/279C

IMPLEMENTING DECREE ON CONSUMER SUPPLY CONTRACTS

Decree Explained

East Berlin WIRTSCHAFTSRECHT in German Vol 13 No 2, Apr-Jun 82 pp 113-115

[Article by Hans Lehmann, chief justice, Central Contract Court and chief, trade department of contract court: "Economic Contracts for Supplying the Population--On the Fourth Implementing Decree to the Contract Law." A translation of the contract law is published in JPRS 80875, 21 May 82, No 2272 of this series, pp 24-37. A translation of the implementing decree discussed below follows this article]

[Text] In conformity with the importance of continually improving the supplying of the population in the further implementation of the main task in its unity of economic and social policy, the new version of the contract law and of the regulations needed for its enforcement also provide special regulations on economic contracts for supplying the population. This takes account of the specifics of such relations, as had already been done in the past by the sixth implementing decree (DVO) to the Contract Law (old). The regulations now issued as the fourth DVO now take in the experiences gathered by the combines and enterprises in consumer goods production and by domestic trade as well as within the framework of state contract court jurisdiction. It led to further refinements of rules, which serves their more effective application and the shaping of more effective relations between commerce and production on behalf of an improved supply performance.

Rules that have stood up well were kept. Regulations that came in through the sixth DVO (old) but apply to relations transcending its particulars, e.g. customer service and spare part distribution (Article 44, Contract Law), settling demands after the expiration of the warranty period (Article 94, Contract Law), have been included in the contract law, in view of the need for its further development, and now apply to all relations within its scope. This makes it necessary in applying the fourth DVO not to confine oneself to its provisions but to keep the regulations of the Contract Law in mind and make sure that it is applied conscientiously and responsibly on behalf of constantly improving the supplying of the population.

The Scope

The scope, as defined in Article 1 of the fourth DVO, extends to concluding and fulfilling economic contracts on delivering all products intended as public supplies

to the economic units in domestic consumer trade--the wholesale and retail enterprises including the restaurants and hotels--and the wholesale consumers. The supplying economic units needed not be designated in particular because the relations addressed are clearly defined by their purpose and the recipients of the deliveries. Furthermore, the special provisions of the fourth DVO are applicable to the relations in the cooperation chain and to the economic units and craft enterprises involved in customer service, as set down in the fourth DVO. Provisions were made for contractual penalties, as of Article 16 section 1, in such a way that that evidence for the indispensability of circumstances causing contract violations also is ruled out for the relations in the cooperation chain. Moreover, the application of the special rules for cost reimbursement is also decreed for the relations in the cooperation chain (Article 17 section 2).

Finally, the fourth DVO also applies to the economic units and craft enterprises involved in customer service. This provision pertains in particular to the rules on customer service and customer service contracts in Articles 4, 9, 10 and 16 section 1, which, in principle, were taken over unchanged from the regulations in effect thus far.

Concluding Economic Contracts

The rules of the fourth DVO aim at further increasing combine and enterprise responsibility for a production of consumer goods, proper as to demands, through a more complete definition of the rights and duties in concluding and fulfilling economic contracts. In making use of the experiences in the application of regulations in effect thus far, some new rules were fashioned, some existing ones were further developed.

The requirements that must be met by the economic units in production and commerce are combined in the fourth DVO so that by means of an economic contract great effectiveness is ensured in supplying the population. The efforts of the economic units in fulfilment of the tasks resulting from state plan decisions and economic contracts concluded must be aimed at making available supply products that meet demands properly and continually. Here, a requisite adaptibility to changing supply conditions is to be developed, in supplying good supplies of qualitatively high-grade consumer goods, and it must be seen to it that economic requirements and customer preferences are met increasingly better in the preparation and implementation of supply processes.

Among the tested rules already contained in regulations in force and now taken over by the fourth DVO is the obligation of the production combines and the management organs of production enterprises to demonstrate to the central organs of consumer goods wholesale, if they request it, that the state tasks or planning quotas assigned to the production enterprises conform with consumer goods balance-sheets or to see to it that the plan, balance and contract conformity is ensured throughout the entire planning period (Article 3 section 2). Meeting this obligation is imperative for concluding contracts at the full scope of the plan and for producing on its basis at proper demands and continually. The same applies to establishing a concrete contractual substance based on commodity supply that has to conform with state planning decisions and the assortment concepts to be worked out in accordance with the planning order,[1] as to Article 3 section 3 in

connection with section 1. The importance of these duties is underscored by that the Contract Law provides, in its Article 109 section 3, for combines and state organs operating on the economic cost accounting principle, if they violate their decision-making obligations in this respect, to be held accountable by having to pay economic penalties.

The fourth DVO furthermore includes a ruling on the right of bezirk councils to set quotas when economic contracts are concluded for receiving certain foodstuffs; the point to be made here is that such contracts can come in the form of delivery contracts as well as commission contracts (Article 3 section 4).

Coordination Contracts

A further development in the legal situation thus far, which suggested coordination agreements merely as a recommendation, is that the economic production and commercial units and the next-higher organs of such economic units now, in accordance with Article 34 section 1 of the Contract Law, are under the obligation to sign coordination contracts if, for the sake of a more efficient preparation of consumer goods shipments or of some other supply performance, intensive long-range cooperation among them is required. By means of such contracts one will have to organize early in the game a long-range cooperation in carrying out the tasks in market and requirements research, working out assortment concepts, and preparing the production of consumer goods, including their requisite ancillary supplies. Agreements must also be set down in the coordination contracts on product quality, on the number of units of newly and further developed commodities to be produced and the commitment to their acceptance, on the organization of operations and customer service and on rational forms for signing the contract between production and commerce.

Article 5 of the fourth DVO contains a listing of the types of coordination contracts which, without being exhaustive, does make Article 35 of the Contract Law more specific. In connection with the demanded agreement on cooperation for preparing assortment concepts in good time, we ought to recall that such cooperation between partners is important for ensuring supplies proper as to demands, especially for fashion items. This, among other things, must be directed at promoting skilled preparations at good time of fashion and assortment concepts and reconciling economic requirements, expressed, e.g., in the demand for large lots, with the population's justified demand for diversified, fashionable and attractive products of the clothing, shoe and leathergoods industry. Because such cooperation cannot be confined to the finished production field but necessarily also extends to the products to be developed in ancillary fields, the coordination contract is the suitable instrument to organize the necessary cooperation of all involved on the various production levels including the commercial enterprises and agree on the needed capacities for the development of new ancillary products, on trying them out, and on introducing new production technologies, as well as on the necessary measures for introducing the end products on the domestic consumer market. Article 5 of the fourth DVO furthermore provides important guidance for ensuring a high supply level; the partners must further develop the content of coordination contracts as requirements may demand.

Delivery Contracts

For the relations between consumer wholesale and consumer retail, special provisions have been in effect since 1978.[2] The fourth DVO does not change those arrangements in any sense. Because the sixth DVO (old) is now rescinded, however, the provisions are now dropped about the relations between produce production and retail trade. So these relations had to be reformulated as, by the way, also those between produce production and consumer wholesale, on the one hand, and the wholesale consumers, on the other. This new regulation lies in orienting toward concluding skeleton contracts and signing sales outlet contracts; when there are differences in handling sales outlet contracts, the partners will make the arrangements for them within their skeleton contracts (Article 8 sections 2 and 3).

Proceeding from the principle contained in Article 2 in connection with Article 3 section 3 of the fourth DVO, that the contract partners in concluding economic contracts have to make public distribution highly effective and that, in particular, the assortment and quality arrangements under such a contract have to conform to that requirement, future relations between commerce and production will become more flexible. It provides him o from whom the order comes with standards for the possibility to submit definitive specifications for the product under orders up to a definite date after the signing of the contract (Article 7). Care will have to be exercised that this new rule, set up especially for the production and supply of fashion-related products, is used sensibly, and exclusively to improve the supply situation.

When specifications are not provided in time, or not at all, contractual penalties are envisaged (Article 16 section 2) to induce proper contract behavior and to prevent detrimental effects on the public supply situation caused by defaulting due to but partly specified contracts.

Material Liability

The rule on supplying newly and further developed technical consumer goods is modifying Article 1 section 3 of the sixth DVO (old) to the effect that a complete testing and securing of spare part supplies and customer service no longer are prerequisite to the signing of a contract but can now also often be provided between the signing of the contract and the delivery. The population is protected from inadequately tested technical consumer goods and from others for which no adequate spare part supply or the necessary customer service are ensured, by requiring the supplier to provide the appropriate evidence and by authorizing the one from whom the order came to refuse to accept the commodities (Article 11 of the fourth DVO). In other respects, the provisions of the first DVO apply to the new and further development of technical consumer goods.

The fourth DVO reconciles the rights of the one by whom an order was placed, in case the delivery was not up to standards, with the rights of the buyer, to which he is entitled in conformity with civil code provisions on warranties with respect to the trade enterprise. This is a better arrangement for ensuring the enforcement of warranty rights all the way to the one that defaulted (Article 13) and for taking care of warranty liabilities to the customer in accordance with law (Article 12 sections 2 and 3).[3] Reasonable trade enterprise interests are balanced

against the immediate access to the producer's customer service facilities to eliminate faults over the short run in products sold yet withdrawn from public distribution due to their faults (Article 12 section 1).

Article 14 of the fourth DVO provides for the case that a product other than the one under contract was supplied, which aims at ensuring a high supply level and at reliability to contracts.

It has become increasingly necessary in practice for the contract partners to come to a rapid understanding about the measures to be taken when public supplies are behind schedule. As a stronger inducement for suppliers, from whom the initiative for an unerstanding has to come, the contract cancellation deadlines as set down in Article 10 section 1 of the sixth DVO (old) was curtailed to 1 month after the start of the delay, in Article 15 of the fourth DVO.

Contract Penalty, Cost Reimbursement and Economic Sanction

Some contractual penalties and factual circumstances have already been referred to above. In establishing the facts of a case as of Article 16 in the fourth DVO, the consideration was to allow deviations from general rules to the necessary degree only where the special implementation of penalty application has been firmly rooted in everyday practice and been exercised for years. The need was affirmed for contractual penalties for deliveries not meeting their schedule or for not fulfilling the obligation to supply spare parts, precluding in such cases the opportunity to prove circumstances that made the violation of obligations inevitable. In this, the exceptional ruling for contractual fines for deliveries below standards was confined, as before, to genuine cases of inferior quality; it was not extended to cases to which the provisions on below-standard perfcrmance would merely apply accordingly (Article 98, Contract Law).

The special rule on cost reimbursement (Article 17 of the fourth DVO), departing from general provisions, in principle abides by previous regulations.

Ensuring the supplying of the population with goods available according to plan calls for a permanent influence on those commercial enterprises which permit infringements of state discipline and, through faulty commercial activity, cause avoidable disturbances in orderly public supply activities. The special circumstances for the payment of economic sanctions therefore were taken over from legal regulations in effect to be able to bring an appropriate influence to bear, as a measure of discipline, on wholesale and retail enterprises. Because it is so important to stay within price group proportions, as set down by the plan, for supplying the population according to needs, there furthermore now is the liability to paying economic sanctions when determinations established are ignored (Article 18 of the fourth DVO).

FOOTNOTES

1. 28 November 1979 Order on the Planning System of the GDR Economy, 1981-1985, Part E, Planning for Domestic Consumer Goods Trade, no 4 (GBL, Sdr. no 1020 e).

2. 3 August 1978 Order on Contractually Organizing Relations in the Supplying of Retail Trade by Wholesale Trade, (GBL, Part I no 25 p 284).

3. Cf. Article 152, Civil Code in connection with the (first) DVO of 27 December 1976 to the Civil Code on Rights and Duties in Filing Complaints Against Inferior-Quality Commodities (GBL, Part I, 1977 no 2 p 9).

Text of Decree

East Berlin GESETZBLATT DER DEUTSCHEN DEMOKRATISCHEN REPUBLIK in German Part I No 16, 29 Apr 82 pp 339-342

[Official text of "Fourth Implementing Decree to the Contract Law—Economic Contracts for Supplying the Population--25 March 1982," signed by Willi Stoph, chairman, GDR Council of Ministers]

[Text] Pursuant to Article 117 section 1 in the Contract Law of 25 March 1982 (GBL Part I No 14 p 293), the following is decreed:

I. General Provisions

Article 1 --Scope

This implementing decree governs the concluding and fulfilling of economic contracts for supplying the population in which the economic units of the consumer commodity trade or the wholesale consumers take part as the ones that place the orders. It also applies to the relations in the cooperation chain and the economic units and craft enterprises involved in customer service as to the provisions that follow.

Article 2 -- The Tasks of Economic Contracts

The economic units, on the basis of state planning decisions, have to organize their cooperation through economic contracts in such a way that a high effectiveness is achieved in supplying the population. With it, they have to ensure the requisite flexibility and bring their influence to bear on the new and further development of qualitatively high-grade consumer goods, an efficient customer service, rational modes of distribution, and the reduction of commodity losses.

Article 3 -- The Basis for Economic Contracts

(1) If legal regulations call for the elaboration of assortment concepts, the economic units are under the obligation to make them the basis for concluding economic contracts.

(2) The production combines or the management organs of the production enterprises have the responsibility to demonstrate to the central organs of consumer wholesale trade, if they request it, the conformity between state tasks or the planning quotas of the production enterprises and the consumer goods balance-sheets and to ensure the conformity between plan, balance and contract throughout the planning period.

(3) If the commodity supply offered on the basis of state planning decisions does not conform, in assortments, qualities and availabilities, with the reasonable demands of the economic units in consumer commodity trade, the production combines

or the management organs of the production enterprises, upon instruction from the competent central consumer wholesale trade organ or from the bezirk council, are under the obligation to ensure appropriate stocks within one month.

(4) Bezirk councils are authorized to instruct the economic units in consumer goods trade to sign delivery contracts or commission contracts on providing certain foodstuffs. Where economic units in the consumer goods trade are not under their control, quotas have to be correlated with the management organs of such economic units.

Article 4 -- Customer Service

(1) To ensure the necessary customer service, the economic units in production or the customer service enterprises of the industrial branch charged by them, in coordination with the local state organs and the economic units of the consumer goods trade, have to maintain their own customer service facilities or sign repair and maintenance contracts with workshops (contractual workshops).

(2) Economic units in production are responsible for ensuring adequate information about buyers and customer services.

II -- Coordination Contracts

Article 5

(1) In coordination contracts, agreements have to be made, in particular, about
1. meeting the tasks in market and requirements research;
2. cooperation in preparing assortment concepts in good time and in measures that ensure long-range consumer goods production preparation including requisite ancillary supplies;
3. product quality, the number of units of newly or further developed products to be produced, the obligation to their being accepted, and the sales and customer service organization; and
4. rational forms for concluding contracts between the economic production units and commerce.

(2) The managers of state organs have the righ to insist that organs under them or economic units sign coordination contracts binding on other organs or economic units in their field of responsibility.

III -- Delivery Contracts

Article 6 --Delivery Relations With Retail Trade and Wholesale Consumers

(1) The relations in the economic units in consumer wholesale trade supplying the economic units in consumer retail trade are subject to the special regulations issued for them.*

*In effect at this time is the 3 August 1978 Order on Contractually Organizing Relations in the Supplying of Retail Trade by Wholesale Trade, (GBL Part I No 25 p 284).

(2) Relations between the economic units in produce and consumer goods wholesale, on the one side, and the economic units of consumer goods retail and wholesale consumers, on the other, are to be handled by skeleton contracts. They can also be concluded with the management organs of consumer goods retail.

(3) Sales outlet contracts are to be signed on supplying the sale outlets of the economic units in consumer goods retail. In a skeleton contract with the economic units in produce it is to be agreed for which products sales outlet contracts are in effect when orders are submitted or when a declaration of acceptance confirms an offer. If no agreement is reached about that, the competent bezirk council decides. That also applies to supplying the wholesale consumers accordingly.

Article 7 -- Delivery Contracts Partly Specified

To take better acount of demand developments, the partners may agree under the delivery contract that the one who placed the orders in the framework of agreements on volumes and assortments may up to a certain date give specifications for the products to be delivered.

Article 8 -- Centralized Buying and Entering the Contract

If an authorized economic unit concludes delivery contracts in a centralized manner, no agreement from the supplier is required for others to enter the delivery contract to place more orders.

IV -- Customer Service Contracts

Article 9 -- Principle

(1) By a customer service contract, a contractual workshop obligates itself to take on, in toto or in part, obligations the production unit has as the producer to repair and maintenance services during or beyond the warranty period.

(2) The production unit has to submit the documentation needed for repair and maintenance services, supply spare parts and pay for the services assumed by the contractual workshop within the scope of the producer's warranty obligations.

(3) The production unit has to supply the spare parts in scope and amount as called for by the contractual workshop within 3 weeks after receiving the order for them. This also applies to contractual workshops that are craft enterprises. The partners may also agree on a different time frame.

Article 10 -- Other Duties of the Contractual Workshop

(1) The contractual workshop must carry out the repair and maintenance within the time frame and in the ways and means set down by the production unit or by the customer service enterprise of the industrial branch it has designated for it.

(2) The contractual workshop has to inform the production unit or the customer service enterprise designated by it, if they so demand, about the organization and

handling of the repair and maintenance and about typical product shortcomings. It has to give access in its workshop to authorized personnel from the production unit or the designated customer service enterprise.

(3) The contractual workshop has the obligation to grant the authorized personnel from the production unit or the designated customer service enterprise access to documents pertaining to the customer service.

(4) The contractual workshop has the right to recognize warranty claims, unless the partners have agreed on different arrangements.

V -- Liability

Article 11 -- New and Further Developments in Products

When he makes new or further develops consumer goods, the supplier has to account for their functional and performance efficiency while abiding by agreed-upon parameters and for a reliable spare part supply and customer service. If the supplier does not come up with such evidence, the one who placed the order may refuse to accept the goods.

Deliveries Below Standards

Article 12

(1) The demand to make good from the one who placed the order may also be addressed to the producer's customer service facility.

(2) The customer service facilities or, if there are none, the production units themselves are under the obligation to eliminate shortcomings brought to their attention by the economic units in the consumer goods trade, acting in response to warranty claims from buyers, within a schedule that permits the economic units in the consumer goods trade to abide by the make-up deadlines as set down in civil law provisions. To eliminating shortcomings found by an economic unit in the consumder goods trade prior to the sale, as reported by customer service facilities, there applies the time frame as of Article 94 section 4 in the Contract Law.

(3) The supplier or the customer service facility must decide at once, at the latest within 2 weeks after being informed of the fault, whether to recognize the warranty claim. If no decision is made within that time frame, the claim is regarded as recognized.

Article 13

If the one who placed the orders recognizes the buyer's claims with respect to substandard deliveries to which he was subject in terms of civil law provisions, that decision is binding on all who contribute their own to the cooperation chain, in imported products, all the way to the last consumer. That is not so if it can be demonstrated that the one who placed the order flagrantly violated his duty to examine the warranty claim.

Article 14 -- Substituting Products in Deliveries

If a product is substituted in deliveries, the partners, without prejudice to their rights as of Article 98 in the Contract Law, may agree on taking it on consignment. The supplier must take the product back after 6 weeks if the one who placed the order was unable to sell it within that period. The partners also may set another time frame for the return of the product.

Article 15 -- Cancellation

(1) Irrespective of presuppositions as of Article 101 of the Contract Law, the one who placed the order may cancel the contract, unless within 1 months after the start of the delay delivery schedule modifications were negotiated.

(2) If the one who placed the order cancels the contract as to section 1, a consignment may be negotiated as to Article 14.

Article 16 -- Contract Penalties

(1) Contract penalties for sub-standard deliveries of consumer goods or for missing the deadlines in deliveries or not meeting the responsibility to deliver spare parts to the contractual workshops or to the economic units in consumer goods trade are not mitigated by the proof that the circumstances leading to the violation of the obligation were unavoidable. This also applies to the contractual relations in the cooperation chain. To the contract violations referred to under Article 98 of the Contract Law the general provisions apply. No contract penalties are to be paid for missing the deadlines in deliveries or not meeting the responsibility to deliver spare parts, if a contractual workshop's demand for supplies was unjustified.

(2) In case that the one who placed the order delays submitting his specifications for a delivery contract as of Article 7, he has to pay a contract fine and a fine for the delayed acceptance. If specifications are not submitted or so late that the supplier can no longer honor them, the legal consequences are those that apply in non-fulfilment of contract.

(3) For failing to submit in time a collective invoice to an economic unit of consumer goods retail, the partner in charge of billing has to pay a contract fine.

(4) A sales outlet contract as to Article 6 section 3 is considered in default, if the delivery has not arrived by the delivery date, nor by the following day for giving orders. The partners may arrange different deadlines.

Article 17 -- Cost Reimbursement

(1) Expenses incurred in connection with the modification or cancellation of economic contracts are paid by the contract partners by halves if the modification or cancellation was made on behalf of supplying the population according to plan. But if it was due to the duty obligation of one of the partners, this does not apply.

(2) The provision of section 1 also applies to the contractual relations in the cooperation chain.

Article 18 -- Economic Sanctions

(1) Economic fines may be levied on
1. economic units the sales facilities of which do not have regularly in supply the consumer goods needed for their implementing their supply tasks, in accordance with assortment and performance merchandise catalogues, despite the fact that the economic units in consumer goods wholesale or produce could deliver to them;
2. economic units in consumer goods wholesale which repeatedly and unjustifiably refuse accepting orders from the sales facilities of the economic units in consumer goods retail, whereby they violate their obligation to supplying the population according to plan; and
3. economic units which, by departing from the price group proportions as set down by the plan, sign or fulfil contracts.

(2) Economic fines as of section 1 figure 1 may go up to M 5,000 for shopping malls, retail centers and department stores and up to M 1,000 for other sales outlets. For the rest, the magnitude of economic sanctions is specified in Article 110 section 1 of the Contract Law.

VI -- Final Provisions

Article 19

This implementing decree goes into effect on 1 July 1982. It applies to all economic contracts that are to be fulfilled after its being in force.

5885
CSO: 2300/279D

IMPLEMENTING DECREE ON PENALTIES FOR BREACH OF CONTRACT

Discussion of Infractions, Sanctions

East Berlin WIRTSCHAFTSRECHT in German Vol 13 No 2, Apr-Jun 82 pp 94-99

[Article by Dr Manfred Enzmann, deputy chairman, State Contract Court: "Responsibility for Violations of Duty." The article below discusses the new contract law, which is published in translation in JPRS 80875, 21 May 82, No 2272 of this series, pp 24-73, and the fifth implementing decree, which follows this article]

[Text] Contract law regulations assign a central place to determining economic law responsibility. This arises from the essence and function of economic law responsibility as a juridical reaction to duty violations reflecting an avoidable subjective hanging back by economic units and economic management organs behind public requirements.[1] Economic law responsibility, as much as any other form of responsibility, goes a long way toward ensuring the operational mechanism of socialist law, its enforceability and its inescapability. Understanding, as a matter of principle, this role of economic law responsibility, receiving added weight through the growing demands placed on economic law within the scope of perfecting economic management and planning, also explains the interest devoted to these matters while the Contract Law was being drafted.[2]

The whole design of the fourth part, as indeed also the revision of the contract law as such, is based on the predominant thought that regulations found suitable should be taken over and perfected and new regulations and solutions should be designed wherever made necessary by the requirements for the further development of economic management and planning and the economic activity of the combines and enterprises. So the fundamental responsibility principles in the contract law in force were kept, in the first chapter of the fourth part dealing with the responsibility in violating precontractual and contractual obligations, and the regulations on economic sanctions, heretofore dispersed, were combined in the second chapter of the fourth part, setting down basic rules on "Responsibility for Violating State Discipline."

Responsibility for Precontractual and Contractual Violations of Duty

Articles 82 to 86 of the Contract Law have in essence taken over the solutions of principle from the responsibility regulations in the Contract Law of 1965, such as:

--The principle that the partners to an economic contract are generally responsible for the violation of their precontractual and contractual duties and have to bear the legal consequences of their duty violation;
--exemption from the legal consequences of the responsibility in terms of contract penalties and damages when unavoidability is proven;
--the responsibility for third parties;
--the responsibility exclusion when caused by partners and in the case of force majeure;
--the general applicability of legal responsibility limitations;
--the presumption of responsibility;
--the duty to avoid or mitigate damage; and
--the duty to ascertain the causes.

With respect to the effectiveness of this responsibility conception, a study came out some time ago that was based on extensive experience and a cautious scientific analysis of it.[3] It contains the indisputable projection that the efficacy of economic law responsibility has its limits and is determined by the requirements, conditions and possibilities of the whole system of economic incentives and economic accounting. With all its reservations, it reaches the conclusion "that for the purpose of greater efficacy in responsibility, no drastic changes are essentially needed in the juridical conception."[4] A higher efficacy in the way economic law responsibility works can thus not be expected solely from rules on cooperative law such as the Contract Law. It must be obtained in consequence of the further perfecting of the whole economic mechanism, as resolved by the 10th SED Congress.[5] These interconnections, which can only be presented briefly in this context, mark the point of departure for all the regulations in the Contract Law dealing with responsibility and the sanction system.

Within the scope of the contract law's responsibility conception there has always been of fundamental importance the determination of the criterion for responsibility, or "accountability," and thus for determining the prerequisites for waiving contract penalties and damages as the most frequently occuring legal consequences of duty violations. In looking at the development of economic law, it marked an essential advance that in the 1965 Contract Law that prerequisite was defined as there having to be circumstances which "could not be prevented even though all opportunities provided by the socialist production relations were fully exploited" (Article 82 section 1, Contract Law [old]). This responsibility criterion has been rendered concrete through many years of copious State Contract Court jurisdiction on responsibility problems[6] and also has become a regular feature in the socialist legal consciousness through the economic units' own debates on the legal consequences of duty violations. Above all, it has distinguished itself as a dynamic criterion that takes account of the conditions and requirements of the constantly changing and developing socialist production relations. That is why it has, for all intents and purposes, been taken over unchanged in the Contract Law.

In preparing the contract law, attention had to be given to the fact, however, that the formation of the state-owned combines as the basic economic units in material production with a largely uniform reproduction process and the resulting increased combine responsibility had to be reflected by the regulations on the responsibility criterion. In conformity with the importance of this task, even the first SED Central Committee experience exchange seminar on the development of the combines offered the following observation:

"Five-year plan implementation thus far has confirmed our view that production continuity is among the most important factors for improving our labor productivity, efficiency and quality. Arrears in contracts, predeliveries, nonfulfilment of planned investments, surplus in material and finished products--such and similar manifestations smack of inadequate continuity.

"Well, such manifestations, as one knows, have many causes. But you cannot make it easy on yourself and simply argue that one supplier or another or one buyer or another is to be blamed for it. To approach matters communistically first and foremost demands that each asks himself: where do I cause disturbances in my enterprise or combine that cannot simply be dismissed by saying that contractual provisions have been violated? Disturbances in the combine--that means, considering the great economic responsibility of the combines with the grown criteria they embody for the production and sale of products, they interfere with the continuity of overall economic development. That is why the responsibility for ensuring continuity starts with every combine and every single enterprise in a combine."[7]

What matters, therefore, is to activate more strongly the combine's inherent potentials for meeting contractual obligations to the outside and realizing intra-combine cooperation. And that is the reason why, in Article 84 section 1 of the Contract Law, the responsibility criterion was broadened to say that the full utilization of all possibilities provided by the socialist production relations especially also includes the "possibilities provided by the uniform reproduction process in the combine." Due to the combine responsibility for the production and delivery, proper as to demands, schedules and qualities, of the final products as set down in state plans, and for organizing a largely cohesive intra-combine reproduction process, the responsibility of the combine enterprises for duty violations with respect to partners outside the combine cannot be confined to causes within the immediate sphere of influence and responsibility of a combine enterprise. Rather, it must also include causes lying in the influence and responsibility sphere of the whole combine, which could have been prevented by the combine.

As to the responsibility of a combine enterprise for a duty violation by another combine enterprise in the combine, one must note that decisions by the general director on waiving material responsibility in duty violations among combine enterprises apply only within the combine and are not binding on the partners outside the combine or on the State Contract Court.[8]

With respect to the "general provisions" of the fourth part, it seems worth noting that, in doing away with the traditional terminology, the concept of force majeure in Article 83, Contract Law (old) has been replaced by that of "unavoidable events." Article 83 section 2 of the Contract Law defines the unavoidable event by, essentially, taking over the legal definition of Article 343 section 2 in the Civil Code, which better expresses the uniformity of the socialist legal system.

Legal Consequences of Particular Duty Violations

In classifying particular duty violations, the law essentially keeps the expedient regulations of the 1965 Contract Law. In revising, legal developments thus far and the results of State Contract Court jurisdiction, and the contract law debate, were taken into account, and some systematic and linguistic adjustments were made.

For systematic considerations, therefore, the violation of precontractual duties, which as one knows had been kept out of the responsibility part, in Article 19 of the 1965 Contract Law, was included in the sections on the various types of duty violations and placed on top of the others, in analogy with trial proceeding considerations. Considering that, even though precontractual duty violations are not so very rare at all, damage claims play a relatively minor role because the evidence that has to be brought is fairly difficult to come by, in the drafts for the contract law for this kind of duty violation a facts-of-the-case clause for contract fines had been conceived in order to be able to affect that kind of duty violation more simply and effectively. But that thought was abandoned again in the course of the debate because in view of the differentiated prerequisites for signing contracts for variuos products and performance areas an existence of such a facts-of-the-case circumstance could not be assessed as unequivocally as in other duty violations and, for the same reason, determining a contract penalty adjudication basis would turn out to be dubious. A certain compromise came then from the possibility granted by the Contract Law to handle such a contract penalty by special law regulations.

In conformity with the importance underscored in the party resolutions of the qualitative factors to the development of economic growth, the Contract Law, after precontractual duty violations, speaks to substandard performance and for the rest maintains the systematic handling of other types of duty violations in accordance with the 1965 Contract Law, supplementing it by the facts of the case for restricting legal shortcomings (Article 99, Contract Law), the violation of the duty to make reports (Article 105 section 1, Contract Law) and the belated return of an object that was used (Article 105 section 2, Contract Law), which either had thus far been handled by supplementary legal provisions or amounted to newly created facts of case.

An analysis of State Contract Court jurisdiction on ensuring quality and the cooperation partners' mode of conduct in quality violations, as well as the debates held while drafting the contract law, unanimously indicate that the rules on proper quality in the 1965 Contract Law largely measure up to requirements and have met their function to ensure quality together with all the other measures in state quality policy. That made it possible to adopt many of these regulations unchanged in the Contract Law. But there are some aspects with respect to further developments that ought to be pointed out.

Touch-up repair is more definitely in focus in the new contract law than it was in the 1965 contract law, it being the major object of warranty claims because, in general experience, it is normally the economically most advantageous alternative for recovering operational functionality. Only when such touch-up is not possible on schedule or the acceptable interests of the one who placed the order demand different warranty services, replacements or discounts may be considered.

In this context one had to take account of the experience that in a sub-standard performance, providing or recovering functionality often causes considerable delays incurring, in particular, efficiency losses in investment activity. One concern of the Contract Law therefore is to discipline the partners' conduct when quality deficiencies do occur and to speed up the repair of functionality in the interest of securing our basic assets economy and uninterrupted production operations. That also is the reason why Article 94 section 2 of the Contract Law

commits the supplier to make good, irrespective of the ackrowledgement that a warranty claim is in order. The same trend is found in the further detail on the right to make good by oneself which, as a prerequisite, merely requires now that it is done properly and with respect for economic concerns, and it no longer depends on the supplier's having caused delays in schedule (Article 94 section 6, Contract Law).

It has turned out to be educationally effective in the past that in the field of investment activity and in deliveries for supplying the population, a supplier could not resort to the fact that a warranty period had expired if a fault discovered later suggested a flagrant violation of the proper-quality-performance duty, especially an infraction of elemental principles in the design, project planning, material selection, finishing and assembly, the testing, storage or recognized rules in construction techniques. On that basis, a supplier is to remain, in fact, liable to warranty services above and beyond warranty periods. Since the partial application of this ruling (Article 36 of the eighth DVO [old], Article 22 of the sixth DVO [old]) has already been extended to civil law (Article 149 section 3, Civil Code), Article 93 in the Contract Law now sets down that in all economic contracts the contractor in cases of flagrant quality infractions also remains liable after the warranty period has expired. However, the regulation of Article 36 of the eighth DVO (old) has not been maintained in that it, in this connection, generally also admitted damage claims after the expiration of the warranty period. According to Article 93 section 2 of the Contract Law, such damage claims are allowable only in exceptional cases on the basis of a decision by the Contract Court, if such a duty violation caused the consignor considerable disadvantages.

As to applying the provisions on sub-standard performance to other contract infractions (Article 98, Contract Law), the previous facts-of-the-case circumstance in neglecting agreements on assortments has been replaced by one of supplying other than agreed-upon products. That actually means a return to the contract regulations of 1957. This was justified by the fact that the expectations placed in the amendment at the time about preventing misunderstandings[9] have not been borne out in practice. On the contrary, the complexity of product nomenclature and the vagueness of the concept of assortments have time and time again caused differences of opinion about whether a deviation from a contractually agreed-upon product still lies within the confines of an assortment deviation and thus comes under warranty claims or must be interpreted as a different product having been delivered. By reintroducing the circumstance of delivering a product other than the one agreed upon, such distinctions fall by the wayside.

As already suggested, for systematic and substantive motives, the responsibility provisions of the fourth part have been expanded by some duty violation situations. That concerns the handling of the legal consequences of legal defect constraint, which was rendered more precise by being adapted to the 5 February 1976 law on international economic contracts[10] and been removed, because of its overriding character, from the third DVO (old), previously Article 38 of the third DVO. The ruling on the legal consequences of violating the duty to make reports was adopted unchanged in substance from Article 12 of the 26 January 1978 decree on ensuring the unity of plan and contract in signing and fulfilling economic contracts.[11] The legal consequences of a delayed return of objects used mrk a further

development of the law situation up to now. On the one side, they are meant to promote the readiness of the ones who own the funds to make temporarily available to other economic units basic assets not in use for the sake of a sound basic assets economy; on the other side, they are to induce the users, as it were, to meet obligations contracted on returning items in an orderly manner. This is meant to counteract a situation not rarely found where a temporary user after the period of use has expired registers an interest in continued use and so does not want to surrender the item he has used, or where the owner of it--afraid of just that--fails to make it temporarily available from the outset.

For reasons of systematic consistency, to the sections defining contractual penalties and damage payments--without prejudice to their importance as it transcends the legal consequences of duty violations, e.g. in contract changes and cancellations--a section has been added on cost reimbursement (Article 109, Contract Law). Cost reimbursement is defined as a special form of making up for material disadvantages for the cases adjudicated under the law. It differs from damage payment in that it is confined to actual and justified costs, i.e., does not include loss in revenue, and, apart from the exceptional cases under Article 79 section 3 and Article 80 section 3 in the Contract Law, cannot be computed against contractual fines. In this connection, terminological distinctions of the 1965 Contract Law, which had no objective justification, have been cleaned up (cf. Article 23, Contract Law [old] "necessary expenditures," Article 90 section 3 Contract Law [old] "additional expenditures," and Article 94 Contract Law [old] "expenditures").

The Contract Law, for reasons explained in detail elsewhere,[12] does without the erroneous term "price sanction." To preserve the possibility that inheres in such a specific form of sanction for simplifying the debate about the legal consequences of a duty violation, however, Article 56 section 2 of the Contract Law provides for the partners to be able to prevent through contractual agreements the possibility of proving the unavoidability of a duty violation for a contractual fine.

Responsibility for the Violation of State Discipline

The preparation stage for the resolutions on which the Contract Law is based contained the mission to set up a unified basic codification for the great number of economic sanctions under economic law regulations.[13] So the regulations in the second chapter of the fourth part dealing with economic sanctions were couched in terms of a responsibility for the violation of state discipline. Such an arrangement took account of the considerations concerning systematic regulations during the debate on the contract law draft, where a strong motion was made to combine all regulations that have to do with legal economic responsibility in a special part on responsibility.[14] Other views had favored including the regulations on economic sanctions with the tasks of the State Contract Court because economic sanctions wholly depend on rulings by that organ. What finally decided it, however, was that the internal connection among material-legal regulations about responsibility appeared to be a stronger and more compelling aspect than functionally relating a form of sanction to a particular organ.

As expressed directly by the title of the second chapter, economic sanctions are linked with the violation of state discipline. That is being considered, ideologically and conceptually, a sufficient demarcation from the responsibility for precontractual and contractual duty violations, in that one proceeds from the proposition that a violation of state discipline in this sense is a violation of duties that exist toward the state directly. It is not being misconstrued here that, given the unified character of state socialist property, a violation of precontractual and contractual obligations among cooperation partners also always contains an element of violating duties toward the state, and hence, of violating state discipline.

Of fundamental importance for the content of a basic ruling on economic sanctions was the elaboration of a unified responsibility criterion. Due to the lack, probably, of an adequately sound conceptual basis for economic sanctions, not enough attention was paid to this requirement in establishing the facts of the case for economic sanctions in the past. What regulations for economic sanctions used to have in common up to now was the reference to an "appropriate application of the provisions of the contract law on material responsibility" (partly by excluding the responsibility of third parties). Then, through Article 17 of the decree to ensure the unity of plan and contract, the circumstances of economic sanctions were straightened out and uniformly applied as precondition for "flagrancy" or "considerable economic ramifications." Yet such preconditions were not envisaged for other facts-of-the-case regulations, or only for specific or selected ones, if not in different forms (e.g. "repeated" duty violations), without motivation for such differentiations. In drafting the Contract Law the justified demand was raised to develop an original responsibility criterion for economic sanctions, as a critical view, due to what was specific for economic sanctions, left no room for an "appropriate" application of responsibility rules to contractual duty violations.

Article 109 of the Contract Law now defines economic sanction as a monetary fine to be paid by an economic unit, set down by State Contract Court decision and collected for the benefit of the state budget. An economic sanction can be levied if state discipline in cases under contract law or other legal regulations has been flagrantly violated. As "flagrant," the Contract Law defines a duty violation when the ways and means of committing it marks an infraction of fundamental principles of socialist management and planning, the compact expression of which is the principle of democratic centralism. In rendering this general standard of conduct concrete, the salient point will be the extent to which a duty violation has hurt the economic units' unity of social and collective interests. Another independent criterion for the flagrancy of a duty violation is whether it was committed although considerable economic implications were predictable. Prescience cannot be clued to the subjective ability of management members in an economic unit; it must be judged by the objective requirements of sound scientific management activity.

In line with the regulatory system of the contract law and its implementing decrees, the general facts of the case in economic sanctions that apply to all cooperation relations are taken care of in Contract Law Article 109 section 1 figures 1 to 5, and the ones for those in special cooperation relations, in Articles 48 and 49 of the third DVO and in Article 18 of the fourth DVO.

This now exclusively involves the circumstances that are directly or indirectly connected with the duties laid down in the Contract Law or its implementing decrees. In other words, the circumstantial catalogue, in terms of the legal domain assigned to the Contract Law and its implementing decrees, as a matter of principle, relates to their objective sphere of application, if one ignores the violation of import licenses (Article 49 of the third DVO), which was included for reasons of utility. All economic sanction material has come from the implementing decrees to the 1965 Contract Law and the decree on ensuring the unity of plan and contract, partly in an abstract version. Some previous circumstances for sanctions have been done away with. Economic sanction law has thus only been codified; it has not been expanded in terms of stiffer sanctions. This aspect of legal policy also is basic to the regulation of Article 109 section 1 sentence 1 in the Contract Law which states the economic units may be held to account by having to pay an economic sanction "with consideration given to other measures for ensuring state discipline." This expresses the connection between economic sanctions and the whole state system for educational measures and imposes the obligation on the State Contract Court, when examining the prerequisites for imposing an economic sanction, not only to ascertain objective facts-of-the-case circumstances, a flagrant mode of conduct or considerable economic consequences caused by the duty violation, but also to take into account other educational measures already taken or in preparation (e.g. disciplinary measures against individuals with responsibilities) because of the duty violation, and ensure, through a proper constraint in the state reaction to duty violations, the desired educational and indoctrinational effect.

The question arises how the Contract Law's basic ruling relates to economic sanction regulations in other legal regulations, such as the 25 September 1975 decree on stopping or shifting the production of commodities and of performances,[15] or the 15 October 1981 decree on shipments and performances for the armed organs--shipment decree (LVO).[16] The answer comes from Article 110 section 3 of the Contract Law, which contains the provision that for other violations against state discipline in preparing and concluding economic contracts, economic sanctions may be determined by other legal regulations. That must be related to future regulations of this kind as well as to already existing ones and means that the principles of the Contract Law on the responsibility for violating state discipline are to be applied to such circumstances accordingly.

On the Further Development of the Contractual Sanction System

The fifth DVO contains the general provisions on computing and paying contract fines as the most frequent form of sanctions for duty violations and the special provisions of the rates and so is directly related to the responsibility part in the Contract Law. To that extent, the content design coincides with that of the previous first DVO (old). But it goes beyond it in that it determines the rates of contract fines not only in the responsibility part of the Contract Law, but also for the contractual fines governed by the implementing decrees. Thereby, in contrast to previous regulatory systems, all provisions setting the rate of contract fines are brought together in one implementing decree, regardless of whether the circumstance of the contract fine they relate to are handled by the Contract Law itself or by one of the implementing decrees.

The elaboration of the fifth DVO on contract penalties as the legal consequence of duty violations was based on the, in principle, expedient regulations of the first DVO (old), the other implementing decrees to the 1965 Contract Law and the decree in effect on ensuring the unity of plan and contract. As previously, the norms for contractual penalties as regulated by the implementing decree are binding on all, unless in special regulations or between the partners, within the scope of disposition opportunities allowed by the Contract Law or its implementing decrees (Article 56, Contract Law; Article 23 of the first DVO; or Article 29 of the second DVO), other arrangements were made. Maintained was the right of the managers of centrally managed state organs to make different arrangements about contract penalties in certain economic areas and branches and for specific performances and time frames, whereby to lend purposeful efficacy to the sanction system (Article 1 section 2 of the fifth DVO).

Modifications and specifications were made in the contract penalty law as follows:

--Not maintained was the duty, set down previously in Article 7 of the first DVO (old) to pay a contract fine within 15 days without prejudice to an appeal and the repayment duty linked with it in case that appeal was denied. This arrangement did not prevail in practice because, if consistently applied, it would have incurred unacceptable financial expenditures and would have done nothing to substantiate the contract penalty's alert function.

--To make the right of appeal uniform with regard to contract penalties, the fifth DVO, based on the principles developed in State Contract Court jurisdiction, adopted a complete enumeration of the reasons for exclusion for ruling on contract fines (Article 3 section 31).

--Proceeding from the simplification of the sanction system, one of the intentions in the elaboration of the contract law, the rates for delay with fault elimination (thus far, 0.5 percent per 10-day period) and for delay in general (thus far, from 0.5 to 1.5 percent increasing per 10-day period) were simplified such that the contract fine for each 10-day period begun comes to 1 percent of the basis on which it is computed. That does away with the escalator clause in computing general contract fines. Its assumption had been that the longer the delay, the more damage would be caused; it also was meant to help minimize delay periods. In simplifying the penalty rates it was taken into account that, according to the Central Administration for Statistics, arrears in the economy are normally short-term and by doubling the rate in the initial phase of the delay (from 0.5 to 1 percent), the effectiveness of the legal consequence of responsibility is raised for most contract violations. Due to the proportionate development of penalty rates for delays, the total delay period until it reaches the maximum penalty rate of 12 percent was prolonged by one 10-day period. In contract penalties for delay with fault elimination, on the other hand, the total delay period until it reaches the maximum penalty rate of 4 percent is cut in half (from eight to four 10-day periods), which speeds up fault elimination.

The lower rates, deviating from the general contract penalty rates in duty violations of economic contracts through investments are determined by the value intensity of investment activities and were adopted unchanged from the eighth DVO (old). If particulars in other performances or products deem it necessary, special arrangements are possible within the scope of Article 1 section 2 of the first DVO.

FOOTNOTES

1. Cf. Authors' Collective, "Sozialistisches Wirtschaftsrecht--Instument der Wirtschaftsfuehrung" (Socialist Economic Law--Instrument of Economic Management), Berlin, 1971, p 248.

2. Cf. M. Enzmann, H. Oertel and W. Panzer, "For Higher State Discipline in Preparing and Implementing Economic Contracts," WIRTSCHAFTSRECHT, No 3, 1976, pp 132 ff.; G. Walter, "Conceptual Problems in the Further Development of Cooperation Law," Ibid., No 3, 1978, pp 121 f.; W. Panzer, "On the Effectiveness of Contractual Responsibility Under Economic Law," STAAT UND RECHT, No 3, 1979, pp 209 ff.; R. Schuesseler, "Conceptual Questions in Regulating Economic Sanctions Under the New Contract Law," WIRTSCHAFTSRECHT, No 4, 1979, pp 207 ff.; B. Beier and W. Panzer, "More on Regulating Economic Sanctions," Ibid., No 1, 1980, pp 32 ff.; Authors' Collective headed by U.-J. Heuer, "Wirksamkeit des Wirtschaftsrechts" (Efficacy of Economic Law), Berlin, 1979 pp 239 ff.; G. Pflicke, "On the Subjective Prerequisite for Responsibility in Contract Penalty and Damage Payment," WIRTSCHAFTSRECHT, No 2, 1980 pp 75 ff.; K. Mueller, "On The Chargeableness of Duty Violations Under Economic Contract," Ibid., No 1, 1981, pp 24 ff.; W. Panzer and E. Suess, "On Economic Contract Responsibility," Ibid., No 2, 1981, pp 89 ff. et alia.

3. Authors' Collective, "Wirksamkeit des Wirtschaftsrechts," loc. cit.

4. Ibid., p 258.

5. Cf. E. Honecker, "Aus dem Bericht des Politbueros an die 3. Tagung des ZK der SED" (From the Politburo Report to the Third SED Central Committee Session), Berlin, 1981, pp 41 f.; "Direktive des X. Parteitages der SED zum Fuenfjahrplan fuer die Entwicklung der Volkswirtschaft der DDR in den Jahren 1981 bis 1985" "Tenth SED Congress Directive on the Five-Year Plan for the Development of the GDR Economy, 1981-1985), Berlin, 1981, pp 86 ff.; "28 January 1982 Decree on Further Perfecting Economic Accounting Based on the Plan" (GBL, Part I, No 3, p 85).

6. "Kommentar zum Vertragsgesetz" (Commentary on the Contract Law), Berlin, 1977, pp 435 ff. and compendium of rulings, "Aus der Spruchpraxis des Staatlichen Vertragsgerichts" (State Contract Court Jurisdictions).

7. G. Mittag, "Purposeful Implementation of the Main Task," EINHEIT, No 10, 1978, pp 1006 f.

8. In greater detail than is possible in the context of these explanations, the responsibility of the combine enterprises is dealt with by U. Gerberding and E. Suess, "On Some Problems of Cooperation Between the Combines and Combine Enterprises," WIRTSCHAFTSRECHT, No 3, 1981, pp 150 f.

9. Cf. "Kommentar zum Vertragsgesetz," loc. cit, pp 509 f.

10. GBL, Part I, No 5, p 61.

11. GBL, Part I, No 6, p 85.

12. M. Enzmann, H. Oertel and W. Panzer, op. cit., p 134.

13. Surveys in connection with the drafting of the contract law have established that since economic sanctions were introduced to GDR economic legislation (by Articles 24 and the subsequent ones in the sixth DVO [old]), 65 pieces of economic sanctions have been adjudicated up to now through 19 legal regulations.

14. Cf. R. Schuesseler, op. cit., p 208; W. Beier and W. Panzer, op. cit., p 32.

15. GBL, Part I, No 45, p 729.

16. GBL, Part I, No 31, p 357.

Text of Decree

East Berlin GESETZBLATT DER DEUTSCHEN DEMOKRATISCHEN REPUBLIK in German Part I No 16, 29 Apr 82 pp 342-343

[Official text of "Fifth Implementing Decree to the Contract Law--Penalties for Breach of Contract--25 March 1982," signed by Willi Stoph, chairman, GDR Council of Ministers]

[Text] Pursuant to Article 117 section 1 of the Contract Law of 25 March 1982 (GBL, Part I, No 14, p 293), the following is decreed:

I -- General Provisions

Article 1 -- Principle

(1) If legal regulations do not set the rates of contract penalties and nothing else has been arranged by Article 56 of the Contract Law, Article 23 of the first implementing decree and Article 29 of the second implementing decree to the Contract Law, the rates are subject to the determination of Articles 4 to 12.

(2) The managers of the central state organs, on the recommendation from the chairman of the State Contract Court or in concurrence with him, may alter the penalty rates set down in this implementing decree or in other legal regulations in economic areas and branches and for certain performances and time frames.

Article 2 -- Computation and Payment of Contract Penalties

(1) There are definite maximum contract penalties for all types of duty violations. If an economic contract is changed after a duty violation has occurred or if another duty violation occurs, another contract penalty may be demanded.

(2) The contract penalty is to be assessed in terms of the value of the performance or the part affected by the contract violation. If the result of the duty violation is that the entire performance cannot be properly used, above and beyond the part affected, the contract penalty is to be assessed in terms of the value of the performance.

(3) Contract penalties are to be computed to the last day of the month, at the latest, following the occurrence of the duty violation, in quality infractions, following the day of the fault report, and in delay, following the termination of the duty violation.

(4) A contract fine is to be paid within one month after being billed.

Article 3 -- Appeal

(1) A contract penalty can be appealed within one month after billing. The appeal must be made to the contract partner in writing and must contain the objections raised against the contract penalty.

(2) Without an appeal or a belated one or one that does not present the decisive causes for the contract violation, the contract penalty is acknowledged.

(3) A contract penalty is not considered acknowledged if the alleged contract violation has not occurred or if the appeal was not raised or not properly made out for serious reasons. The rate of the contract penalty is not recognized if the computation can be shown to have been mistaken.

II - Contract Penalty Rates

Fines for Quality Infractions

Article 4

(1) A contract penalty for sub-standard performance is 8 percent. When the contract is cancelled because of sub-standard performance, the contract penalty is 12 percent.

(2) The contract penalty for sub-standard performance in economic contracts via investments is 4 percent.

(3) The contract penalty for sub-standard delivery of consumer goods is 12 percent. In sub-standard deliveries of consumer goods based on a sales outlet contract, the contract penalty is at least M 10 per contract position and sales outlet.

(4) The contract penalty for infringing the trade-mark obligation is 3 percent.

Article 5

(1) If the deadline for making good or replacement performance is missed, the contract penalty rises
1. as to Article 4 section 1, by 1 percent each of the basic rate for every 10-day period begun, at the most, however, by 4 percent,
2. as to Article 4 section 2, by 0.05 percent each of the basic rate per day, at least by M 30 per day, at the most, however, by 8 percent.

(2) The same contract penalty applies if the consignor, in terms of Article 88 section 2 of the Contract Law, is entitled to warranty claims only.

Article 6 -- Fines for Delays

(1) The contract penalty amounts to
1. 1 percent for each 10-day period or part thereof when performance deadlines or schedules are missed,
2. 4 percent for each 10-day period or part thereof when performance deadlines or schedules are missed because a consignor refused acceptance,
3. 0.1 percent per day when intermediate deadlines in economic contracts on investments and on the repair of basic assets are missed,
4. 1 percent per day when delivery deadlines or schedules for spare parts to contracted workshops or commercial enterprises are missed, and
5. the rate set by the president of the GDR State Bank (late charges) when payment deadlines are missed.

(2) Fines for delays in contracts may not exceed 12 percent in cases under section 1 figure 1 and 2, 6 percent in cases under figure 3, and 20 percent in cases under figure 4.

(3) If several deadlines have been missed for one and the same performance, the contract penalty for missing an earlier deadline is to be applied to the contract penalty for missing a later one.

(4) If no other arrangements are made as to section 1 figure 5, the late charges for missing deadlines for contract penalty, damage payment, cost reimbursement and other claims come to 8 percent annual interest.

Article 7 -- Contract Penalties for Non-fulfillment

(1) The contract penalty for non-fulfillment is 12 percent.

(2) The contract penalty for not fulfilling the duty to deliver spare parts to contract workshops or commercial enterprises comes to 20 percent.

(3) The contract penalty for not fulfilling a contract with a sales outlet comes to at least M 10 per contract position and sales outlet.

(4) A contract penalty for non-fulfillment cannot be demanded along with a fine for delays.

Article 8 -- Contract Penalty for Infringing the Reporting Obligation

The contract penalty for infringing the reporting obligation is 25 percent of the contract penalty for duty violation which, impending, was not reported at once.

Article 9 -- Contract Penalties in Economic Contracts for Usufructary

The contract penalty for infringing the duty to surrender an object used after the termination of the usufruct relationship is five times as high as the rate of penalty to be paid for the period of delay. When the use was gratuitous, the computation of the delay penalty is to be based on a commensurate usufructuary rate.

Article 10 -- Special Contract Penalties in Economic Contracts on Investments and the Repair of Basic Assets

(1) The contract penalty for refusing or interrupting a building license, for remaining behind schedule in supplying an object to be repaired, or in submitting labor documentation, and for infringing the content or scope of labor documentation agreed upon, is 0.05 percent for each day of delay, based on the value of the performance to the consignor affected by the contract violation, the maximum being 6 percent, however.

(2) The contract penalty for an unlawful use of the performance prior to acceptance is 0.1 percent for each day, depending on the value of the unlawfully used performance, the maximum being 6 percent, however.

Article 11 -- Special Contract Penalties in Import Contracts

(1) The contract penalty, as to Article 43 of the third DVO to the Contract Law, is 0.05 percent for each day that schedules or deadlines were missed, the maximum being 5 percent, however.

(2) Contract penalty for non-fulfillment is 5 percent.

(3) In the case of sub-standard performance, the contract penalty is to be paid as for a delay in terms of section 1, counted from the day of the fault report to the day on which the warranty claims are settled.

Article 12 -- Special Contract Penalties in Economic Contracts in Supplying the Population

The contract penalty for not submitting a collective invoice in time to the retail enterprise is 10 percent of the retail price of the object, with a maximum of M 50, however. If the collective invoice is made out for shipments covering several days, the contract penalty may be computed on the basis of each delivery day.

III -- Final Provisions

Article 13

This implementing decree goes into effect on 1 July 1982. It applies to all economic contracts that are to be fulfilled after its being in force.

5885
CSO: 2300/279E

CSIKOS-NAGY VIEWS ECONOMIC GROWTH, REFORM, CEMA COOPERATION

Budapest HETI VILAGGAZDASAG in Hungarian 8 May 82 pp 4, 5

[Interview with Bela Csikos-Nagy, state secretary and chairman of the Hungarian Economics Society, by HETI VILAGGAZDASAG, on the eve of the 21st Congress of Economists to be held on 10 and 11 May 1982 in Balatonfured, place of interview not given]

> [Text] At their annual congress this year, to be held on 10 and 11 May (it will be already the 21st in the series of congresses), Hungarian economists will discuss the new growth path and the alternatives of economic policy. We interviewed Bela Csikos-Nagy, state secretary and chairman of the Hungarian Economics Society. He discussed, among other things, the possibilities of changing over to a different growth path.

[Question] In its March issue, VALOSAG characterized the present state of the economy as stagnation. In conjunction with this, this year's congress of economists evidently regards as its task to smooth the changeover from stagnation to growth. Could you expand on this?

[Answer] The use of the word is not the most fortunate. Stagnation has also an unfavorable connotation. One can interpret stagnation to mean making no headway, becoming bogged down. In our country, however, the purpose of the quantitative curb is to gain strength, reorganize and establish a production structure that can better adapt to the international requirements.

To my mind, the use of the word stagnation serves to characterize the economic situation that has developed by curbing the growth of domestic demand. The change is fundamental. After an average annual growth rate of 6 percent attained in the long run, the economic policy adopted in 1979--among other things, under the pressure of the external conditions--calls for an average annual growth rate of only 1 percent in the period 1980-1982. This of course raises a series of problems that are manifestations of stagnation. Obviously it is more difficult to find solutions for the problems raised by socioeconomic development if national income, respectively the part of national income available for spending domestically, does not grow and occasionally even declines. Our policy needs economic growth, because it is then unambiguously clear to society that we are making progress. And the social formations of the socialist economy are committed in principle to a fixed growth path. In production this is stimulated by the profit incentive. In the sector of consumption the pressure for growth is generated by the gap between the demand for and supply of goods collectively. Therefore policy is reluctant to accept stagnation, and if stagnation is unavoidable, policy strives to make the duration of stagnation as short as possible.

[Question] During the decades of building socialism, we successfully employed on several occasions a policy of boosting production. Why can't we do this today when there are significant capacity reserves in industry?

[Answer] Also in the debate on the concept of the 1982 national economic plan, several contributers urged that we adopt a policy of boosting production. This would be warranted, among other things, by the declining rate of capacity utilization. Capital efficiency has been worsening in Hungary in recent years; incidentally, this is a natural consequence of curbing growth. If an economy that is growing at annual rate of 5 to 6 percent is switched into lower gear, reserve capacities are unavoidable. This is because the capacities that are starting up will, for a time, expand the economy at the old rate.

From the viewpoint of capacity utilization it unquestionably seems that the concept of stagnation is accompanied by a missing of opportunities. If we were to seek a solution to the problem merely by operating idle capacities, then actually we would have to investigate the justification of curbing growth. But in the given circumstances we know that a high growth rate would require more import, while export could not be expanded accordingly.

Of course, in a sense a policy of boosting production applies even today. There is no curb on the expansion of profitable export. As a matter of fact, stagnation wishes to indicate that, despite everything, we have not been able to expand export at the desired rate. But it would be especially dangerous to pursue a policy of boosting production by expanding domestic demand. We formulated our long-range structural policy still at a time when energy was cheap. If we were to utilize our idle capacities indiscriminately, then we would have to increase, among other things, our import of hydrocarbons by several million tons, and this could be offset by export only to a very small extent. We would trigger a large-scale foreign indebtedness, in a situation when it is extremely difficult to obtain new credits.

[Question] More and more reports are reaching us that the price of oil on the world market is declining. Will this not create a new situation sooner or later?

[Answer] The propaganda that the world-market price of oil is declining is a source of much confusion. On this basis, some people object even to the 25-percent rise in the domestic consumer price level of energy that became effective as of 15 April. The weakening of oil prices on the world market applies predominantly to oil prices higher than OPEC's benchmark price of 34 dollars per barrel. But two things must not be disregarded. First, within CEMA we are following the world-market price as its average over a five-year period. The price that we are paying the Soviet Union for petroleum in 1982 corresponds to a price of 23 dollars per barrel. If the OPEC price does not change in the coming years, the CEMA price will rise to the level of the world-market price in 1986. This is a significant temporary advantage that applies to the quantity coordinated in the trade agreements. If we want to buy more, we have to pay the world-market price for the additional quantity.

All this means that the burden of the second oil shock of 1979-1980 will be felt by the Hungarian economy only gradually. For this reason in our ruble-denominated trade we have to plan an annually increasing export to offset the same volume of import. This is why we have to be moderate in the domestic spending of the produced national income. Finally, this is why we must attach special significance to energy conservation.

[Question] Energy conservation was the main topic at last year's congress of economists.

[Answer] When we set the rational use of natural resources on the agenda last year, we did so intentionally. A debate on this topic will probably be unavoidable also now, but attention this year will presumably focus on the openness of planning, and on the questions of regulation and organization in conjunction with the demand-led growth path.

[Question] Demand-led growth is frequently being mentioned these days. In what do you see its novel elements?

[Answer] The Marxian scheme of expanded reproduction describes the shifts in the proportions of the three basic sectors (industry, agriculture and services) and within industry of departments A and B, in conjunction with the changes in the structure of consumption. If the state wishes to regulate the course of socialist industrialization on this basis, it must free its structural policy, which forms the structure of the economy, from control by prices. In this case prices have a profit-and-loss accounting function and, trailing the structure, ensure a material self-interest in the production structure. This is actually demand-led growth, served by an autarchic price system.

A structural policy completely divorced from the market's price mechanism, as the cardinal rule of socialist industrialization, is the prevailing view even today, desptie the fact that within CEMA the contractual foreign-trade prices have been based since 1958 on the world-market prices, and the 1971 resolution to integrate the CEMA countries' economies has placed on the agenda production specialization and cooperation among the socialist countries. This meant a general revision of the traditional structural policy.

If we have to take international competitiveness into account, then the growth path has to be led by demand, and this can be accomplished only if the price function is activated. On the basis of these considerations we introduced the competitive price system in 1980. A clearly defined price system is essential to, but not a sufficient condition for, rational behavior. The system for managing the economy must comprehensively be made suitable for this purpose.

[Question] In your opinion, do we need a new comprehensive economic reform in Hungary?

[Answer] Naturally, I cannot know in advance what consensus will emerge at the congress. But in my opinion, the three pillars that we erected during the past quarter century provide a suitable foundation for the continuous corrections that unquestionably are necessary to better adjust to the requirements of the world market and to further improve our ability to compete internationally.

[Question] What are these three pillars?

[Answer] The first pillar is the new economic policy introduced in 1957, which is sometimes forgotten, but without which the 1968 economic reform would not have been possible. Admittedly, the measures introduced in 1957 were of fqndamental importance primarily from the viewpoint of agriculture. Here I have in mind the abolition of compulsory deliveries. But there were also comprehensive measures. We introduced profit-sharing at that time, and we made profit the main criterion for evaluating the work of the enterprises. We abolished then the rigid system of

central wage tariffs, and autonomous wage administration by the enterprises became possible within the given limits. The second pillar was the 1968 economic reform that introduced regulation of the economy by means of economic instruments, abolishing the fixed path set for the enterprises by the system of obligatory plan indicators. And the third pillar was the 1980 correction of the system of regulation: the principle of normative financial regulation, and introduction of the competitive price system.

[Question] If a series of minor measures produce a qualitative change in the system or regulation, then in the final outcome this can be interpreted as a comprehensive economic reform.

[Answer] First of all I would like to answer your question in principle. In this formulation, we would have to characterize the past quarter century as a period of permanent economic reform. But I fear this would discredit the concept. I think that we nevertheless should make a distinction between a process of minor corrections and a one-time comprehensive change. In my opinion, only the latter could be called a reform. An economic reform in this sense becomes necessary when the contradictions intensify between the specific system of regulation and the conditions that can be ensured for growth.

Determination of the time and mode of the changes requires careful deliberation. But even under such circumstances there might be losses resulting from the changeover. The danger of this is greater when there is comprehensive new regulation than in the case of minor measures, when also path corrections are much easier to make.

Of course, I would like to immediately add that the 1968 economic reform liberated growth forces that dwarfed the changeover "losses". But specifically this proves that we may boldly embark on reform when the conditions for it are ripe.

Your question can now be reworded as follows: Are there contradictions in our system for managing the economy that require a reform? I am certain that many elements of our system for managing the economy require correction. In the coming years, through an entire series of partial measures, we must further improve the ability of our economy to adjust to the changing world requirements. Furthermore, I believe that problems could accumulate by the mid-1980's, which could then raise the question as to whether a reform is necessary. But I am not certain about this. Therefore I, too, am curious what view will emerge about this at the congress.

[Question] In your opinion, how will all this affect cooperation within CEMA?

[Answer] Already in the 1970's many of us were of the opinion that the ability of the CEMA mechanism to function did not necessitate identical systems for the management of the economy in the individual countries. Every country can be expected to adapt its internal system for the management of its economy, to those nationally determined socioeconomic conditions under which the socialist economy can best function. In the same manner, however, every country can be expected to adjust in the international division of labor to the procedures and methods that have developed there.

Even today the system of CEMA cooperation is characterized by barter based on the coordination of material balances. In most CEMA countries the domestic systems for the management of their economies are likewise geared to this. Starting out from this fact, some people assumed that the Hungarian reform of 1968 would loosen

the ties within CEMA. But specifically the reform made clear to many of us the advantages that the division of labor within CEMA offers on the basis of mutual advantages, as a result of economic geography and other factors.

Every CEMA country has suitable experience to prove that the different types of systems for the management of the economy can be harmonized, because each country has extensive relations with countries outside the organization and is adjusting on the world market to the forms of cooperation prevailing there.

[Question] In recent years the question has nevertheless been raised that the differences between the systems for the management of the economy in the individual CEMA countries should be narrowed.

[Answer] If the European socialist countries wish to make significant progress in production cooperation and specialization, then it is really necessary to bring their systems for the management of the economy closer to each other, primarily for the comparability of the production conditions and in the interest of intensive trade based on mutual advantages.

Thus if someone raises the issue by saying that one or another CEMA country's system for the management of the economy is bad because it differs from the systems in certain other countries, this is sheer economic nonesense. But what we unquestionably must do also at the CEMA level is to define more accurately the set of requirements for cooperation geared to economic efficiency, and then to gradually apply these principles.

1014
CSO: 2500/255

DECENTRALIZATION OF ECONOMIC MANAGEMENT CONTINUES

Budapest MAGYAR HIRLAP in Hungarian 14 May 82 p 5

[Report by Eva B. Mezei: "Statutory Regulations Governing Enterprise Supervision Are Changing"]

[Text] On the proposal of the minister of finance, on Thursday [13 May 82] the Council of Ministers discussed and adopted certain changes in the staturoy provisions governing the supervision of enterprises.

Within Their Own Competence

The present modifications are a part of the process within which--under the Ministry of Finance--the committee for coordinating the review of enterprise organizations has been reviewing already for the past 1.5 to 2 years the work of the supervising organs. In addition, this committee presents proposals for the abolition of statutory provisions that hamper enterprise independence and are in conflict with the 1968 economic mechanism and with the 1977 law on enterprises. Another consideration in the investigation is to relieve the supervising organs of administrative and operational chores that are unnecessary and can be handled in other ways. Of the statutory provisions reviewed by the coordinating committee, six were modified earlier and 13 have been modified now.

Up to now when state organs purchased real estate, leased property or bought merchandise from private individuals, the state organs in question--depending on the value limits--had to obtain permission from their supervising organ, respectively the finance minister's advance agreement. In the future such approval will not be necessary, and the statutory provisions will apply only to purchases of real estate.

A decree that dates back to 1951 and regulates the reimbursable expenses of workers on domestic official trips, during foreign service and when transferred has likewise been amended. Previously the minister determined what assignments were foreign-service assignments, whether first or second class travel by rail was authorized, and what per diem allowance was granted for meals. From now on this will be the task of the employer, respectively the provisions of the decree will be uniform.

Up to now the enterprises were obliged to submit to their minister separate reports for his obligatory biennial control audit. In the future the enterprises will be relieved of the obligation to file this separate report, and the control audit's cycle will be identical with the cycle of supervisory control.

If enterprises altered the work schedule between Christmas and New Years, or rescheduled workdays because of exceptional circumstances, they had to obtain approval from their supervising organ. In the future the enterprises will be able to alter their work schedules independently. The supervising organ's intervention likewise will not be necessary in cases when the enterprises want exemptions from the obligatory norms (standards) regulating floorspace.

Only If Disputed

According to the decrees now in force, ministers had to issue annual directives on the development of educational and cultural activities (within their own area) and had to investigate the situation of education and culture every three years. According to the adopted modification, the issuance and validity of the directives will be linked to the medium-range plan's period, and the supervision cycle will also change to five years.

The resolution governing the admission applications of engineers for training in economics has likewise changed. Up to now the opinion of the supervising organ also was necessary, in addition to the enterprise's recommendation. From now on only the enterprise's recommendation will be needed for enrollment.

Up to now a worker wishing to take a second job with another enterprise on a part-time basis always had to turn to the supervising organ to obtain an exemption from the conflict-of-interest ban on other employment. With the issuance of a new decree, however, the supervising organ will grant such exemptions only in the case of employees appointed by the given supervising organ. Otherwise an exemption can be granted by the head of the employing organ, by the director of the enterprise.

The reviewing of collective contracts also has been simplified. Up to now the supervising organ was obliged to obtain copies of the collective contracts from all employers, and to call the enterprises' attention to any improper provisions. Now the supervising organ will review a collective contract only if it is disputed.

Earlier it was left to the discretion of the supervising organ whether or not certain groups of employees studying abroad on scholarships received their average pay at home. In the future such cases will be treated uniformly, and the supervising organ's permission will not be necessary. An employee accepting a work assignment abroad was able to obtain his salary from his enterprise only with the special permission of the minister who authorized the work abroad (in agreement with the minister of finance). On the basis of the modification, this authority will now be exercised by the head of the employing organ.

There is a change also in the procedures to be followed when an enterprise director hands over his files to his successor. In the past a representative of the supervising organ also had to be present at this transfer. This will no longer be necessary.

Broader Enterprise Independence

The adopted modifications will ease the workload of the supervising organs, relieving them of chores that up to now have been cumbersome or outright perfunctory. In sum the amendments will contribute toward enabling the supervising organs to concentrate more on meaningful work in managing the economy, and at the same time the amendments broaden enterprise independence. Since the coordinating committee is continuing its review of statutory regulations, further changes in the provisions can be expected in the future.

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CSO: 2500/257

INDUSTRIAL PRICE MOVEMENTS IN 1981 ANALYZED

Budapest FIGYELO in Hungarian 19 May 82 p 3

[Article by Dr Laszlo Harsanyi and Mrs Katone nee Zsofia Kelemen: "The Movement of Industrial Prices"]

[Text] The movement of industrial prices last year was more moderate than in 1980. Industry's domestic sales prices rose 19 percent in 1980, the year of their introduction, and 7 percent in 1981. The 1981 price movements conformed to the planned level. (In 1980 they were much higher.)

The new system of pricing made the domestic price level and price ratios more sensitive to foreign-market price movements.

The basic cause of the relatively moderate movement of the producer prices in 1981 was that on the world market the price movements of sources of energy quieted down.

On 1 January 1980, the domestic price of petroleum was 10 percent lower than the price of Saudi crude. The rise in the price of Saudi crude on the world market, and the change in the forint's exchange rate in relation to the dollar necessitated a further increase in the producer price of petroleum. At the end of 1981, the ratio of the domestic price of petroleum to that of Saudi crude was about the same as two years earlier.

According to one of the most essential elements of the pricing regulations applicable to the competitive branches of manufacturing, the rise in the level of the domestic sales prices may not exceed the price increase in nonruble-denominated export. This regulation was observed also in 1981.

In the case of finished products, the attainable price increases were limited by the world-market recession. Even though the engineering industries of many countries operated at reduced capacity, the output nevertheless exceeded the demand. Where producers have been able to pass on their higher material and other costs, product prices show a slight increase.

The intensification of recessional phenomena was characteristic also of the market for light-industry finished products. The market for textile-industry products was the weakest. On the market for chemicals, metalworking basic materials and steels, the declining demand prevented any significant price increase.

In the developed price ratios a significant role was played by the prices of energy sources. These were mostly official prices that followed the fixed export or import prices.

As a result of official price measures, the prices in nonferrous metallurgy rose in 1980 and fluctuated slightly in both directions in 1981. The prices in ferrous metallurgy rose in 1980 but already dropped in 1981.

Manufacturing industries were able to pass on their higher costs in their domestic prices only to the extent that the price level attained in nonruble-denominated export and the profitability (the dual limit) permitted.

The domestic and nonruble-denominated export price indices in engineering and the clothing industry, the two most important industries whose prices are geared to the export prices, were as follows:

Development of Prices (Preceding Year = 100)

Prices	Engineering	Clothing Industry
1980 domestic	102.8	103.8
nonruble-denominated export	101.7	101.3
1981 domestic	102.4	99.5
nonruble-denominated export	107.5	102.7

From the table it is evident that the enterprises observed the limit on raising the price level. We do not have a clear picture as yet of how the enterprises observed the limit on profitability. Thus we likewise do not know whether the price increase attained in nonruble-denominated export improved the profitability or was it merely sufficient to neutralize inflation and the higher costs.

Characteristic of the situation in the food industry and the building materials industry, which (with the exception of two sectors within the building materials industry) do not employ the system of competitive pricing, was that--in the interest of keeping the consumer price level within the planned limits--they were able to pass on in their transfer prices only a proportion of the increases in energy prices during the year. To compensate for the higher production costs due to rising energy prices, the state budget increased the price subsidies for the building materials industry and reduced the turnover tax for the food industry.

An important objective of the new price mechanism has been to provide incentives for reducing material costs and economizing in the use of materials. The readjustment of the price ratios also served this purpose.

If we compare the 1981 data of current productive consumption (the bulk of which is the cost of materials) at the 1980 prices, with the data for 1979 (the last year before the introduction of the new system of pricing) recalculated into 1980 prices, it can be established that the proportion of current productive consumption within the gross output increased by 1 percentage point in industry as a whole, by 3 percentage points in the construction industry, and by nearly 2 percentage points in agriculture.

At the same time, however, current productive consumption declined in most industries. The decline of the proportion of productive consumption was relatively smaller in those sectors that account for a large sale of entire industry's productive consumption (the food industry, engineering, the chemical industry). At the

same time, however, exceptionally large (8 percentage points) were the savings in the electric power industry and the building materials industry. The opposite trend, that of rising productive consumption, can be observed in the mining industry, presumably because it is able to mine coal under increasingly more difficult natural conditions, at higher cost.

Due to the differences in the structure of their productive consumption, the bottom line of the individual sectors was affected differently by the price changes. In comparison with the preceding year, socialist industry's gross output in 1981 increased by nearly 80 billion forints, while its current productive consumption increased by 54 billion forints. This growth in value terms can be attributed predominantly to higher prices. The value of the materials and energy used in production rose less than the sales prices of the produced products. Due to differences in the magnitude of the price effect, from their net output the industrial enterprises realized a "price profit" of 8.9 billion forints, a signifixant proportion of which was the sources of enterprise profit. Computed in the same manner, in 1980 socialist industry suffered a "price loss" of more than 22 billion forints.

Changes of the transfer and procurement prices varied considerably by sectors.

The rise in the mining industry's 1981 gross output can be attributed entirely to higher prices. The price increases amply covered the higher costs of productive consumption. The mining industry realized the bulk of the price profit in entire industry's output.

Because of the difference in the price effect on output and on current productive consumption, the electric power industry suffered a loss, while the building materials industry showed a minimal price profit.

It is noteworthy that the negative difference increased in metallurgy. In engineering the difference was negative in 1980 and positive in 1981.

The different rates of price change significantly influenced the results of production activity. The question of how the activity of individual enterprises was affected by the price changes awaits further analysis.

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CSO: 2500/256

EXPANSION OF COAL, COKE PRODUCTION FACILITIES DESCRIBED

Budapest MAGYAR IFJUSAG in Hungarian No 15, 9 Apr 82 pp 9-11

[Article by Laszlo Varga: "Renewals, [and] Becoming Richer"]

[Text] Mining and metallurgy. The connection between them is a close one: the foundries are fed coke, made from coal. In the epic era of our industry's growth the smelters in Dunaujvaros were built on the excellent quality coking coal base hidden in the Mecsek coal basin. A coking plant was also built in the young socialist city, but time has passed it by since then, as it has also passed by some of the Mecsek mines and shafts. Together with obsolescence and old age, the new requirements are also making demands. It is in our national economy's interest to use domestic coal at least to replace the coking coal imported from the capitalist countries. This is why heavy billions are being spent on the Dunaujvaros coking facilities and on the mines of the Mecsek coal basin. Large-scale work has already begun under a major investment program by the state, and by 1992 we will have spent over 30 billion forints on development, reconstruction and investments.

Changes in Dunaujvaros

Mining and metallurgy have formed an alliance with each other. This "long-distance marriage" was made in the interest of furnace coke. The "marriage partners" are connected by railroad between Komlo and Pecs. Last year, 600,000 tons of coke preconcentrate were transported from the Mecsek coal basin to Dunaujvaros. According to the plans, after the developments are completed, beginning in 1993 this amount will rise to 900,000 tons per year.

Istvan Kiss is head of the main engineering department of the coking facility operating within the Danubian Iron Works. He is a chief engineer, an experienced technical expert, with long experience. I asked him:

"What is the world market price of furnace coke?"

"Its present price is $170-$180 per ton, but it is going up each year..."

"How much is needed in Dunaujvaros and in the national economy?"

"We use 600,000 tons of furance coke in a year. The national economy's demand is 2.4 million tons per year. We cover 1 million tons of this from socialist imports. We are paying hard currency for 400,000 tons. The balance is provided by our domestic resources."

"A new coking works is under construction here. The value of this major investment by the state is 10.5 billion forints. What is its most important purpose, and how soon will it be recovered?"

"We must start it up no later than in the first half of 1986! According to our calculations the cost of investment will be recovered in 4 years. Primarily we would like to replace capitalist imports. But in order to do this we will also have to receive more coal from the Mecsek. At the present time we are able to produce 780,000 tons of furnace coke in a year. Our new facility will be capable of much more than this: its capacity will be 1.3 million tons. And this requires 1.8 million tons of coal..."

They are facing significant changes in Dunaujvaros. At any rate they were forced to renew their facility. Two blocks of the present coking works are totally outdated. Especially the one built in 1956, the standards of which are equivalent of those of the 1930's. Thorough changes are beginning to take place now. Soviet technologies recognized as the most modern are being installed, and the technological processes are also being modernized.

Demands and Requirements

We can see the real value of the changes truly and realistically in the mirror of coke production. Let us follow the path of the present technology. The coal arrives in Dunaujvaros by rail. It is stored in the open, then loaded onto a complicated system of conveyor belts by loading scoops. This is called the coal-preparation pahse. At least four different quality coals are blended, then homogenized: that is, crushed to uniform size. After this, the path leads to the coal-storage tower of the coking block, from where it is fed into the coking chambers by feeder carts. It is heated there for 12-14 hours at about 1,300 degrees Celsius. After that the coke pie is finished; it is mechanically discharged and crushed down. This is coke now, and it is cooled by water.

I asked Istvan Kiss again: "What are the changes in the new coking works?"

"After the coal arrives by rail, we will store it in closed reinforced concrete bunkers rather than in the open. We are building more coking chambers with higher capacities. We are modernizing the discharge step of the coke pie, and we are building a dry coking facility. The essence of this latter is that we are circulating nitrogen instead of water in the slaking chamber."

"What is the advantage of this new technology?"

"It is more modern. The environmental pollution effect is decreased. It is more energy efficient. It improves the physical characteristics, that is, the quality of the furnace coke. We can produce more coke."

"How does good coke look?"

"It has a gray shine, and the pieces are dense and 4 to 8 centimeters in diameter. There are no cracks in it, and it is hard."

When coal is transofrmed into coke it undergoes complicated chemical processes, during the course of which a number of harmful and environment polluting byproducts are generated. The new investment also solves the problems of decreasing these and turning them into useful products. This will be the task of the chemical gas purification plant next to the coking works. When 1 ton of coal is heated up, 300 cubic meters of flue gases are produced. This is purified, on the one hand, and, on the other hand, it is recycled to heat the blocks. Let's look at its useful aspects. For example, benzol can be extracted from the flue gases. After it is refined, it becomes export quality benzoline, or crystal-clear benzol. Other products useful to the chemical industry which can be recovered, are toluol, xylol and solvent naphta. All these can be sold at good prices.

The hydrogen sulphide given off, which--when combined with air is capable of intensive corrosion--also deteriorates the environment. It corrodes iron. It will also be possible to put it to use. It will be combusted, purified and converted to solid, flake-shaped sulfur. It is a raw material in demand for the domestic production of sulfuric acid. Dunaujvaros will supply 8,000 tons of it per year.

The new coke works is built on the basis of Soviet plans and represents Soviet technology. Of course, the knowledge of Hungarian experts will also be incorporated in the new facility. Among other things, the engineers of KOGEP [Metallurgical Machinery Design Enterprise] are designing most of the underground installations, the conveyor belt system, gas desulfurification, sulfuric acid production, the social facilities, and the environment protection installations. We talked with Engineer Laszlo Balogh, who is in charge of the machinery, about these things while visiting the stiles of the new investment.

About 30,000 cubic meters of dirt was moved for the coking block's foundation. Iron webs are being stretched out in a huge "ditch," bratticemen are preparing for the concrete work. The fire-brick warehouse is already under roof (24,700 tons of it will be needed, and 9,000 to 10,000 tons of it will be received this year from the Soviet Union). This is important because it must not be exposed to moisture and dirt. The new cooling towers and the walls of the kitchen and dining room have also already grown out of the ground. The flue gas pipeline is under construction. Welders are working in the 2-meter-diameter steel pipes, and they can comfortably walk inside them. Its wye-shaped support columns are already anchored in the ground and are awaiting the giant pipes to be placed onto their shoulders. Excavation of the foundations of the dry coking works will begin this year, and construction of the biological-wastewater clarifier will begin in the spring. The site is also being readied for the foundation of the railcar dumping facility.

Leszlo Balogh's complaints are justified. No matter what they touch, something has to be demolished or relocated, and care must be taken to maintain the functioning ability of the old equipment which provides the production. They are not building on green, or virgin land but on the crowded land of the Danubian Iron Works, a site thickly enmeshed and built up underground as well as above ground. They have to struggle for every foot of land or "vacant" area.

The investment is in its first stages. This year 600 million forints' worth of work, installations and construction will be implemented. Most of it, the bulk of it will come later.

The Lias Program...

The National Planning Council voted, under the title "Improvements for the Production of Cokeable Coal in the Mecsek" 22.9 billion forints for the major investment by the state which can be used in the Mecsek coal basin beginning in 1982. The public simply refers to it as the Lias program.

"Estimating it in terms of tons, the Lias-age quantity being explored even today can be expressed only in billions! One-third of this estimated quantity is exploitable. The geological coal inventory of the mines we are presently working is 400 million tons, and 180 million tons of it can be mined out," says Janos Kovacs, head of the main long-range development department of the Mecsek Coal Mines Enterprise.

"Will you also be opening up new mines?"

"No! We are planning to spend this money on the reconstruction and improvement of the existing mines. As of 1 January 1982, we have practically 10 years to translate our ideas into reality. We plan tto spend 4 billion forints in this five-year plan. In 10 years our deep mining production must increase from 2.6 million tons to 3.4 million tons."

"What will be the significant stages of this development?"

"Dunaujvaros (and our national economy) expect more and better quality coal from us. Thus our task is to improve the quality of the cokeable coal concentrate. Stage one of the modernization of the coal-preparation facility in Pecs will begin to operate next year. Unfortunately several of our mines and shafts have become old and obsolete. We are scheduling their reconstruction or shutdowns in a planned manner. Preparations for work of this nature are under way at the Zobak shaft, the Beta shaft and at the Pecs mining facility. Next year we will begin to deepen the Istvan 3 shaft. New stepw will be taken between 1984 and 1985 in the Vasas [Iron Man] mining facility. Another five of our mines will have their turns during the Seventh Five-Year Plan. We are expanding and modernizing our machinery park, our transportation system, and improving our service support base and material supply system. Stage two of the Pecs coal-preparation facility will also be continued and completed."

Komlo Preview

The huge cokeable coal vein which will represent the "real Lias program" and which is now being explored, is farther away from Pecs and Komlo at the foot of the Mecsek in the "Maza-South" region. To exploit this, new shafts and mines will really have to be built and opened. This is still the job of the future..., but the large-scale reconstruction and development which runs until 1992, rushes forward to meet this future. The Pecs coal-preparation facility will also serve this goal. And the construction of shaft 4 of the Kossuth mine can also be considered a precursor of this; it is now being examined by the experts.

The new shaft towers in the Mecsek are near the old Anna shaft. The new facility cost almost one-half billion forints. Its purpose and significance are summarized by Lajos Belenyesi, deputy chief machinery engineer of the Kossuth Mine:

"Two of our old shafts became slanted and sagged, and became unsuitable for operation, this is why we had to open a new one. And the other reason for it is that we also come back and want to win out the coal under the shaft's feet. This shaft 4 of ours is the most modern one in the Mecsek coal basin."

"Thus, is moderness also undergoing a test with this new shaft?"

"Yes. The shaft is "lined" with slipring concrete. The shaft's transportation equipment is controlled by thyristors which is also a novelty. Its essence is that the acceleration and deceleration of the cage is programmed, the operator does not need to interfere with it. We are trying out new machines down in the mine also. The mine carts are moved by electro-hydraulic means, the shaft loading is also done by machines, the hitcher only controls them. These make the job simpler, safer and faster.

"In addition to the above, our dispatcher system was also modernized. There is UHF radio contact between the underground locomotive engineers and the people directing transportation. Besides this, they have also installed an industrial television network. The dispatcher can see the most important locations on the monitor and can follow the transportation system. This method also makes material transportation and personnel transportation more modern and safer, and at the same time also represents savings in manpower."

When I talked with Janos Kovacs, he also mentioned that the construction of computer centers is also included in their development program. They will receive an R-22 machine which will be installed in the headquarters and a smaller capacity computer in each facility will be linked up with it. With this system, they wish to increase mine safety and the efficiency of energy supply, rational transportation and the rapid exchange of information and instructions.

We became convinced in Dunaujvaros and in the Mecsek coal basin that sizeable goals of the national economy are being implemented. Mining and metallurty are being brought closer to each other. And man also does not get lost in the jungle of the new techniques and technologies.

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CSO: 2500/242

KIRO GLIGOROV NOTES IDEOLOGICAL PROBLEMS IN ECONOMY

Belgrade EKONOMSKA POLITIKA in Serbo-Croatian 26 Apr 82 pp 20-22

[Transcript* of speech by Kiro Gligorov delivered in a meeting of the LCY Central Committee: "The League of Communists: The Reach of Government Ownership"]

> [Text] This is not the first time that we have published in toto the speech of one of the participants in a republic or federal plenum of a central committee of the League of Communists. This time our reason for publishing Kiro Gligorov's speech from last week's meeting of the LCY Central Committee was not only that this statement goes to the heart of the matter in pointing up the sources of our increasingly numerous controversies. An especially and sufficiently valid and urgent reason lies in the initial foundations just adopted for the program of long-range economic stabilization, that is, in the obvious connection between ideological and economic topics. There is no question that economic stabilization will not be forthcoming unless the major ideological dilemmas are not debated in advance or at least simultaneously, and last week's meeting of the LCY Central Committee confirms that this kind of clarification is necessary in the League of Communists first of all.

A debate of the problems of political ideology in the LCY and in our society is indispensably necessary, not only in advance of the congress, but also as an ongoing form of monitoring, analyzing and assessing ideological developments in the society which we are building on the new socioeconomic and sociopolitical foundations. Our society is very complicated in its socioeconomic, ethnic and cultural characteristics, and aside from the inherited contradictions, numerous new contradictions in dynamic economic and social development also arise by the nature of things.

For the leading subjective forces, including science, and especially for the LCY, this must be a constant, enduring and overriding objective if they are to

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* The title and subtitle were supplied by the editors.

be able to preserve their vanguard role, ideological unity and the strength of that factor which opens up the prospects for resolving the contradictions of society. It is a prerequisite for that that the LCY and our science constantly study actual social developments and processes and creatively seek the answers to the issues which stage of social development inevitably places on the agenda.

The fact that the LCY and our society have a long-range strategy sketched out for the development of socialist self-management, that we have grasped the basic patterns of the development of socialist self-management, its categories and institutions, does not free us of the need and responsibility to constantly trace the actual developments in society (economic, political and social) and draw the appropriate conclusion concerning the situation in society and concerning ideological and other developments within it. This is especially relevant today, since both the situation in the world and the situation in the country are such as to require uninterrupted scrutiny of practice and of everything taking place within it.

We can state in this connection that one of our obvious shortcomings is in precisely this area. Real developments in society are not being sufficiently monitored and studied so that conclusions can in turn be drawn concerning action in society and ideological activity in particular. This was understandable in the period after adoption of the new constitution and a number of important documents determining the future development of our system, but the mere repetition of those commitments, insistence on their realization, and neglect of all the phenomena having an impact on our present domestic and international situation and the period of development are today proving to be increasing inadequate. A careful analysis of the new phenomena is necessary precisely so that our commitments display their full importance and relevance, but also so that they are given the elaboration and application required by this period of time and its problems.

I would like to say that for all the critical attitude which is displayed when the situation in our science is discussed, especially the situation in the social sciences, it is indisputable that our social sciences have never been so occupied in studying our reality. By contrast with previous periods, when foreign scientific knowledge was taken over uncritically and academically and our own topics, self-management and our economy were even evaded, now the principal involvement of the social sciences is almost without exception related to our society, its developments, and its contradictions. The LCY, consistent with its lasting commitment, ought to be enlisting our scientists in the study of our reality to a far greater degree than in the past and ought to be using the critical consciousness of science for its own ideological effort and its own action. Certain worthwhile undertakings that have already begun toward rallying our scientists around the LCY in the study of the problems, changes and developments in society, of the situation in the working class, in self-management, and concerning the strategy of material, technological and scientific development, have paramount importance if we are to overcome practicalism, improvisation and arbitrary conclusions concerning the situation in our society. The collective mind is more than ever necessary to our organization of the League of Communists. All creative people need to be rallied

around the LCY and a creative dialogue stimulated along the line of the historic interests of the working class and the effort necessary to oversome the stagnation in self-management and to open up the prospects for an offensive course of the LCY toward more radical transformation of society on the foundations of socialist self-management. The objective and subjective circumstances which facilitate and dictate that orientation have come about. In that creative effort there will also be a differentiation as to the views that now exist and answers will be made to certain dilemmas, and this can only strengthen the ideological unity of the LCY.

Where To Begin

In the reading the material that serves as the basis for the debate at this meeting I could not escape the impression that the ideological problems of society and the LCY are being treated in a rather stereotyped manner in categories such as dogmatism, liberalism, rightwingism, ultraleftism, centralism, separatism, and so on. I do not mean to say that these directions in ideological commitment do not exist. On the contrary, but the trouble is that they are viewed, not always or to a predominant degree, as phenomena always displaying the same characteristics, a bit outside of space and time. This happened because we lack a more detailed analysis and assessment of those developments in society which arise out of the real and dynamic processes taking place in our society and above all in self-management itself.

Every social system must base its analysis of the situation and of possible changes above all on an assessment of the position--economic and social--of its principal protagonist. In our system that is the worker in associated labor, with the inalienable rights which are his under the constitution, and the basic organization of associated labor, as an economic and legal individual, the self-managing commodity producer of associated labor, which as a rule cannot exist unless it is associated, above all to form a work organization, and then in all other associations in which it can pursue some of its objectives.

It is my impression that precisely this is lacking. It seems that there is not analysis of real social and economic changes, though those changes are profound. Let us mention only the changes in the social composition of the population, the changes based on development and changes within the working class, on an analysis of its interests and preoccupations, on an analysis of the obvious and very marked growth of bureaucratic-statist structures, the enormous phenomenon of the administration, ideological problems are not arising out of the position of productive labor, the position of the social services, the exodus of the able-bodied population from rural areas, and so on.

It is in that social and economic ferment that one should seek the causes of various phenomena of an economic, social and political nature and, of course, the material basis for various ideological currents. Dogmatic or liberalistic conceptions also find fertile soil in them, they feed nationalism, especially economic nationalism, which is on the rise, as are those conceptions which are expressing nostalgia for centralism or which see the cause of our serious disturbances in the sovereignty of the republics and the autonomous nature of the provinces, in the principle of equality respected in the process of reaching agreement and in the initial weaknesses of that process.

To speak in more detail, the ideological problems of our society at the present moment are not being sought and analyzed in the existing production relations, which are far from those which have been proclaimed and are desired, nor in the relations of social ownership, the alienation of the worker from income and the surplus value of labor; the fate of the surplus value of labor is not being analyzed and traced, nor are the forces which are usurping it, their social power and the relations which are springing up on that basis, but rather, if you will forgive me, what we have is a repetition of the rather stereotyped outlooks, which have their place as manifestational forms, but they lack weight, specific reference and social consequence, and that is why they seem like very familiar rhetoric, and the analysis they offer in ideological terms is not well-founded enough or convincing.

Ideological problems in the sphere of self-management are to be found first of all in all the departures from principle and from the law of income and in all the usurpations of income. They lie in the sphere of the disposition of the surplus value of labor, in all the deformations in the formation and use of accumulation, in the lack of respect for economic laws and of voluntaristic sketching out of development goals, megalomaniacal plans, and so on. Problems of an ideological nature should be seen in the inappropriate treatment of the economic functions of income, in the idealistic treatment of the conclusion of accords and compacts outside their economic essence, in the topsy-turvy treatment of solidarity without economic limits, in the neglect of the economic accountability of entities, all of which indicates that we have not kept up sufficiently with actual economic processes, their protagonists and representatives.

Let me say incidentally that the major issue of the importance of socialist commodity production in our system, of economic laws and patterns under the conditions of social ownership and self-management, has been extremely oversimplified and treated in black and white: for example, as though some are for a completely free market like they have in capitalism, while others completely deny the market, which is an excellent example of how the real ideological problems related to a key issue are not seen or dealt with, since the differences that arise in this context are more differentiated and subtle and cannot be denoted accurately at all in those terms.

The LCY accordingly has very important tasks in the ideological area. If we retain the outlook based on government ownership, the technobureaucratic monopoly and group-ownership appropriation, no program of economic and social measures, however well conceived, will rescue us from this extremely unfavorable economic situation. Predominant reliance on government measures and administrative action are appropriate to technocratic structures and the consciousness of government ownership, since that is the basis of their power, just as the pooling of labor and capital and integration into the broadest forms of association are alien to them.

The operation of the market and of economic laws does not suit either group, since that limits their power and makes their function as arbiter superfluous.

The LCY must oppose the underestimation of the objective operation of economic laws and the market under the conditions of socialist commodity production, since that orientation is making it more difficult for self-management to develop and is strengthening other tendencies in society. That market is not someone else's market which has been copied, but a market of self-managing commodity producers, which they have to conquer by using their own economic strength and the power of science and planning. Anything other than that is either an idealization of social relations or encouragement (conscious or unconscious) of spontaneity, a strengthening of government and technocratic power, a belief in the automatic operation of the system and in a voluntaristic economic policy.

There are also cases when relations in our system are idealized, and sometimes some of its institutions are even ideologized, which cannot be of great help to a living revolutionary movement. Only presence in the basic social cells and events furnishes the necessary knowledge that always and repeatedly gives relevant meaning to the basic commitments. The fact that we do not have a clear answer to the problem of new jobs, say, or to the deformations which are cutting across the unified Yugoslav market and slicing it up, the fact that vacillation, differing interpretations and the like are occurring in connection with those fundamental institutions of our community life, the fact that people are falling back to bourgeois positions concerning the concept of the economies of the nationalities, the fact that the existence of a single exclusive currency on the unified Yugoslav market is in jeopardy--all these are also manifestations and symptoms of ideological vacillation, of quandaries, and not infrequently even of non-Marxist and bourgeois views. They have not been sufficiently clarified, and we cannot claim that we have been clearing them up at this meeting, but we have a duty to label them and confirm the necessity of a dialogue on these issues before the congress and at the congress. Otherwise the necessary unity of the LCY will be a desire or a proclamation, but in reality the ideological splintering of the rank and file will continue.

Government Logic Has Replaced the Logic of Self-Management

Finally, the question was raised at the Third Congress of Self-Managers of responding to the situation as to why many workers have little influence on decisionmaking in connection with the disposition of income, as to why production work is treated the way it is, as to what their real role and influence is in the delegate system, as to whether or not they see their own existence sufficiently within their own basic organization of associated labor. Entering into those questions, into the causes of that situation, and opening up the worker's prospects for seeking through full commitment in his organization ways of stabilizing his position as a self-manager and the economic stabilization of society is a great challenge, one which necessitates a direct examination and definite and clear answers and ideological commitments within the specific conditions.

There is a very great deal of talk about resistance, about various types of enemies of various stripes, etc. Certainly they do exist, the more contradictory and burdened with difficulties the situation, the more vigorously they will emerge, and that dare not be forgotten or underestimated. But devoting

so much space to them is to me a sign of taking up a defensive posture, however revolutionary may sound the words about the need to have a showdown with them. An authentic offensive posture toward these enemies of social self-management would be to promptly answer the outstanding questions and contradictions of society and to overcome the ideological differences within the League of Communists of Yugoslavia. But it is in the lag in resolving the new problems that have arisen, in the orientation toward seeking answers in government intervention, in the outdated methods of economic policy, in the stereotyped analysis of the situation which is not based on the actual situation in self-management and its basic goals that I see the causes of the exacerbation of economic and other difficulties. And that phenomenon in and of itself is an ideological demand for the answers to the aggravated contradictions to be sought in decisions and measures which do not set in motion the motivation of the principal protagonists in our system, nor do they awaken his energy and strength. Government logic has replaced the logic of self-management. That is why in our entire community, from the opstina to the Federation, and especially in the republics and provinces, the characteristics of a government community have been more fully manifested, and their functions of self-managing socialist communities have been neglected.

We must answer the question as to why the government, using statist measures, has entered into the very sensitive relations in the domain of self-management, and how did this occur? It is a fact that statism is on the rise, that in economic policy we have mainly been using the kind of measures whereby we turned first of all to the sociopolitical communities, to the opstinas, the republics and the provinces, rather than to the principal protagonists--organizations of associated labor and to their motivation.

Or, if we ascertain that there is a certain lag in self-management, that the working class is not exercising control of income or that it is controlling a truncated income, that must in turn give rise to certain processes in society and a change of the balance of power. Social power is rising up on the basis of economic power and having the result that the self-managers in the organization of associated labor are themselves, compelled by circumstances, turning ever more frequently to the government and calling upon it for certain interventions and encouraging the statist way of resolving problems. After all, to a certain degree the government has taken over functions in regulating the social relations of self-management instead of associated labor itself. But it is not just a question of that; the problems would not be resolved if the government only withdrew from the sphere of self-management. After all, the government is not performing any of its inherent functions of its own at the present time. Nor is it performing to the degree it should the function of protecting self-management, the monitoring function, nor are the inspectorates functioning, nor is there all that social regulation and direct activity to preserve the unity of the Yugoslav market, and so on.

What has happened here is a substitution of functions: on the one hand the government has moved into the sphere of self-management, but on the other it has neglected certain of its own jobs, certain inherent government functions which the government will have to perform for a long time yet. At the same time, the narrowed space for self-management has placed the working class and

associated labor in a position which does not correspond to what we wished and expected 12 years ago whe we enacted the worker amendments.

Or take the phenomenon of autarky. It could not have come about without relying on certain ideological errors which we have not been discussing sufficiently. Not only because of the neglect of economic laws, but also because of the way of thinking which has become commonplace and which is based on the logic of government ownership. It is on that basis that the opstina, the province, the republic and indeed Yugoslavia as a whole has rounded itself off. This process is not related solely to certain particularistic and special interests. It is a fact that exclusiveness exists in the basic organization of associated labor on the basis of group-ownership behavior. Which accounts for the conservative tendencies that are present in it, and so on, all the way to the fact that Yugoslavia is shutting itself off from foreign countries as a community economic space and unified market. There have to be ideological problems at the heart of that. We have to extract them and in debating them along with all the other issues to guarantee unification of the League of Communists on these issues. Without that and the clearing up of these problems we can go on pleading for the unity of the League of Communists of Yugoslavia, we can go on repeating our strategic commitments, but practice will not follow those commitments unless those ideological problems which are present are cleared up within the League of Communists itself, and unless, of course, there are specific responses to those outstanding issues we have been referring to.

The idealization of social relations is very much evident in our context, and that is another ideological problem. One sometimes gets the impression reading certain authors that we are building a society in a test tube. What would a pure self-management socialist society look like? Unfortunately, it is being painfully built in the class struggle to achieve self-management, a struggle in which there are conflicts between differing and contradictory interests and through which the new self-managing socialist society is being built gradually through the everyday social battle to change the existing relations.

And finally, I am very skeptical about the justification which is often heard and which sounds like a consolation and is to some extent lulling--"everyone is having difficulties, so it is nothing strange that we should have them to." We are not, of course, any oasis in which we can live idyllically out of reach of the restless waves from the world. But in and of itself this is not only not a consolation, it is not even an answer to our situation. Every society does have its own problems, does solve them as best it can and on the basis of the class interests which prevail. We have a responsibility to the League of Communists and to the working class to resolve our problems by pursuing the interests of the working class and self-management and using the means appropriate to that. In such moments I am convinced that the true nature of our system, its capabilities and advantages, should be manifested. Provided ideological views are clear concerning the nature of the problems and the phenomena we confront and provided we are ready to resolve them without being blinded by momentary partial interests and are not led either consciously or unconsciously by slogans whose content is that of government ownership, nationalism or anything other than self-management. That is why the tasks in

the ideological domain are just as important, if not more important than all the preoccupations with material development, with investments, and the other preoccupations which are living such an intensive life in the heads of many of our cadres.

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June 23, 1982